

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

CIVIL ACTION NO: 05-10370PBS

| | |
|-------------------------------------|---|
| BARBARA CORDI-ALLEN AND |) |
| JOHN ALLEN, |) |
| Plaintiffs, |) |
| |) |
| |) |
| VS. |) |
| |) |
| JOSEPH R. CONLON, ARTHUR F. HUTLIN, |) |
| NORMAN H. POPE, KEITH S. ALTHAUS, |) |
| and MARINNA MATRICARDI as they are |) |
| Members and collectively the TRURO |) |
| ZONING BOARD OF APPEALS and THE |) |
| TOWN OF TRURO, MASSACHUSETTS, |) |
| AND BROOKE NEWMAN, |) |
| Defendants |) |

**DEFENDANTS' MOTION FOR
SUMMARY JUDGMENT**

The defendants, Joseph R. Conlon, Arthur F. Hutlin, Norman H. Pope, Keith S. Althaus, and Marinna Matricardi as they are members and collectively the Truro Zoning Board of Appeals and the Town of Truro move for summary judgment in their favor on all counts of the complaint asserted against them. See Fed. R. Civ. P. 56.

As grounds, the defendants state that the plaintiffs' claims are time-barred and that the plaintiffs have otherwise failed to establish those claims. As such, the defendants are entitled to judgment as a matter of law on all counts of the plaintiffs' complaint. In support of their motion, the defendants rely upon and incorporate by this reference the following as if fully set out herein:

1. **Exhibit 1:** Plaintiffs' Complaint;
2. **Exhibit 2:** Affidavit of Patricia Pajaron, Conservation Agent For the Defendant Town of Truro, with attachments;
3. **Exhibit 3:** Deposition of John Allen;

4. **Exhibit 4:** Deposition of Barbara Cordi Allen;
5. **Exhibit 5:** Plaintiffs' Appeal of Denial of Request for Enforcement;
6. **Exhibit 6:** Decision of the Zoning Board of Appeals dated 1/19/05;
7. **Exhibit 7:** Plaintiffs' Answers to Interrogatories;
8. **Exhibit 8:** "Subdivision Plan of Land in Truro made for John C. Worthington";
9. **Exhibit 9:** real estate advertisement;
10. **Exhibit 10:** December 11, 1992 letter from the Board of Selectmen to David B. Lajoie;
11. **Exhibit 11:** Town's Board of Health Minutes from June 4, 1997;¹
12. **Exhibit 13:** Affidavit of Nicholas Brown;
13. **Exhibit 14:** letters from the plaintiffs to the Town, dated October 20, 1996 and November 4, 1996;
14. **Exhibit 15:** April 7, 1997 letter from FELCO, Inc. to the Truro Board of Health;
15. **Exhibit 16:** Town's Board of Health Minutes from June 11, 1997;
16. **Exhibit 17:** July 26, 1999 letter from the Department of Environmental Protection, without enclosures;
18. **Exhibit 18:** June 2000 cover letter from the Department of Environmental Protection to the plaintiffs, without enclosures;
19. **Exhibit 19:** June 19, 2000 letter from Town Counsel to the Department of Environmental Protection, without enclosures;
20. **Exhibit 20:** Affidavit of Roland W. Breault, Truro Town Administrator, with attachments;
21. **Exhibit 21:** excerpt from current version the Zoning Bylaws;
22. **Exhibit 22:** excerpt from the Zoning Bylaws as of April 1999;
23. The accompanying memorandum of law.

Wherefore, the defendants request that summary judgment enter in their favor on all counts of the complaint against them.

REQUEST FOR ORAL ARGUMENT

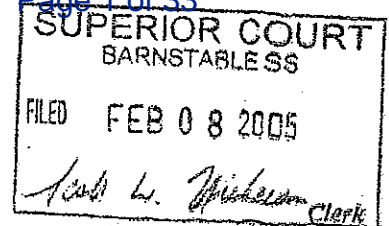
Pursuant to Local Rule 7.1(E) of the Local Rules for the United States District Court for the District of Massachusetts, the defendants request that they be afforded the opportunity to present oral argument on the issues outlined in this Motion.

Respectfully submitted,
The Defendants,
By their attorneys,

/s/ Deborah I. Ecker
Deborah Ecker, BB0#554623
Deidre Brennan Regan, BBO #552432
BRODY, HARDOON, PERKINS & KESTEN, LLP
One Exeter Plaza, 12th Floor
Boston, MA 02116
(617) 880-7100

Dated: May 26, 2006

¹ In numbering the exhibits, number 12 was overlooked and thus the omission to an "Exhibit 12" is intentional.



COMMONWEALTH OF MASSACHUSETTS

BARNSTABLE, ss.

SUPERIOR COURT

CIVIL ACTION NO. ~~04~~ 05-80

Barbara Cordi-Allen and John Allen)

Plaintiffs)

v.)

Joseph R. Conlon, Arthur F. Hultin,)
Norman H. Pope, Keith S. Althaus, and)
Marinna Matricardi as They are)
Members And Are Collectively)
the Truro Zoning Board of Appeals,)
Brooke Newman, and the Town of)
Truro, Massachusetts)

Defendants)

| | |
|-----------------------------|-------|
| 6040A000002/08/05CIVIL ENTR | 249.0 |
| 6040A000002/08/05SURCHARGE | 15.0 |
| 6040A000002/08/05SECC | 20.0 |
| 6040A000002/08/05SUMMONS | 3.0 |

COMPLAINT

This action involves an appeal by Plaintiff Barbara Cordi-Allen of a decision of the Town of Truro Zoning Board of Appeals denying Ms. Cordi-Allen's request for revocation of a building permit and enforcement of the Town of Truro's Zoning Bylaw against the Defendant Brooke Newman. In addition, Plaintiff John Allen and Barbara Cordi-Allen (collectively the "Allens") also seek a judgment that the Town of Truro acted improperly and beyond its statutory and constitutional authority in taking certain land of the Allens in the Pamet Harbor area of Truro and have violated the Allens due process and equal protection rights in a concerted effort by the Boards, Commissions, and other agencies of the Town of prevent the Allens from developing in their waterfront property.

JURISDICTION

2. This court has jurisdiction pursuant to M.G.L. ch. 40A, Sec. 17, M.G.L. ch. 212, Sec. 4; M.G.L. ch. 214, Sec. 1; M.G.L. ch. 231A, Sec. 1; M.G.L. ch. 79, Sec. 14, 28 U.S.C. 1983, and M.G. L. c. 12, §§ 11H, 11I..

PARTIES

3. Plaintiff, Barbara Cordi-Allen, is a person and has an address of 143 Ardsley Road, Longmeadow, Massachusetts 01106.

4. Plaintiff John Allen is a person and has an address of 143 Ardsley Road, Longmeadow, Massachusetts 01106.

5. The Defendant Joseph R. Conlon, is a person with an address of 408 Route 6, Truro, Massachusetts and a member of the Truro Zoning Board of Appeals.

6. The Defendant Arthur F. Hultin is a person with an address of 11 Lawrence Way, Truro, Massachusetts and a member of the Truro Zoning Board of Appeals.

7. The Defendant Norman H. Pope is a person with an address of 5 Collins Road, Truro, Massachusetts and a member of the Truro Zoning Board of Appeals.

8. The Defendant Keith S. Althaus, is a person with an address of 46 Shore Road, Truro, Massachusetts and a member of the Truro Zoning Board of Appeals.

9. The Defendant Marinna Matricardi is a person with an address of 24 Fisherman's Road, Truro, Massachusetts and a member of the Truro Zoning Board of

Appeals.

10. The Defendant Town of Truro is a body politic and corporate with a town form of government and has an address of Town Hall Road, Truro, Massachusetts.

11. The Defendant Brooke Newman has an address of 273 Roaring Fork Drive, Aspen, Colorado 81611.

FACTS

12. In March, 1996, the Allens purchased a waterfront property on Pamet Harbor adjacent to the Pamet Harbor Yacht Club with an address of 5 Yacht Club Road, Truro, Massachusetts (the "Property").

13. The Property was improved with a single family dwelling.

14. The Allens also applied to the Department of Environmental Protection ("DEP") for an M.G.L. ch. 91 license to maintain and extend a pier at the Property in 1996.

15. The notice of the application was published in November, 1996, and letters were sent by the Town administrator and the Harbormaster of Pamet Harbor requesting that the M.G.L. ch. 91 license be denied and/or that a public hearing be held.

16. Within a month, the harbormaster "blew the whistle" on Chairman of the Pamet Harbor Commission who was also a member of the Pamet Harbor Yacht Club alleging

that : (i) the Chairman pressured the Town Administrator to write the letter after the harbormaster originally refused to do so; and (ii) the harbormaster signed a similar matter in "a moment of weakness" when he believed that he would not obtain a raise if he refused to write a letter in opposition.

17. When these allegations were revealed, the Town of Truro selectman refused to accept the resignations of Pamet Harbor Commission members and went so far as to criticize the harbormaster for his actions.

18. In April, 1997, the Allens requested variances from the Truro Board of Health for the construction of a new septic system on the Property which was denied by the Board of Health.

19. Concurrently, the Allens had filed a two notices of intent with the Truro Conservation Commission in 1996, to obtain an order of conditions to construct: (i) the septic system and a larger house on the property; and (ii) a pier which reached to navigable water at mean low water on their property.

20. The Town of Truro Conservation Commission refused to take any action on either notice of intent.

21. In October, 1997, the Town Administrator issued a memorandum to all town boards warning the Boards to be cautious in dealing with the Allens.

22. The letter stated that he would not speak with the Allens without witnesses present and stated that the Boards should act similarly.

23. The letter also directed the Boards and Commisisions in contravention to public records laws to not release information to the Allens or their attorneys and required that any from the Allens request be handled by the Town's attorneys.

24. In 1998, Defendant Brooke Newman purchased 3 Yacht Club Road which was adjacent to the Property.

25. In May, 1998, the Truro Conservation Commission issued an order of conditions allowing Ms. Newman to relocate and expand her home at 3 Yacht Club Road which showed a limited amount of "fill" being place on the property and raising the maximum elevation of the land near the home to elevation 12.0 NGVD and no placement of rocks, construction of a fence, or planting or trees..

26. In August, 1998, the Conservation Commission approved one and possibly two revised plans for the Defendant Newman which showed a different location for the home and a replacement septic system.

27. Again, only a limited amount of "fill" was to be brought to the property primarily adjacent to the dwelling and in no case higher than elevation 12.0 NGVD and no placement of rocks, construction of a fence, or planting or trees..

28. On or about October 28, 1998, the Building Department of the Town of Truro issued a building permit for construction on Brooke Newman's property at 3 Yacht Club Road without requiring Ms. Newman to obtain a special permit or a variance.

29. The permit was based upon a plan that required the use of "breakaway panels" to meet flood zone requirements.

30. In late February, 1999, the Conservation Commission approved a revised plan for the Newman home which raised the exit pipe for the septic system to a height of 12.8 feet.

31. Again, only a limited amount of "fill" was to be brought to the property primarily adjacent to the dwelling and in no case higher than elevation 12.0 NGVD and no placement of rocks, construction of a fence, or planting or trees.

32. After approval of the revised plan in late February, 1999, construction began on Ms. Newman's home at 3 Yacht Club Road.

33. The construction, however, was not completed in compliance with approved plans in areas subject to Commission jurisdiction as: (i) the foundation did not have breakaway panels; (ii) fill was brought on to the property to at least elevation 13.5 to cover the outlet to the septic tank from the home; (iii) large rocks were brought onto the property which were not shown on any plan; (iv) a fence was constructed; (v) an overhanging roof was constructed; and (vi) while Newman had informed the Conservation Commission that she would only plant "native grasses", Ms. Newman planted numerous trees and shrubbery.

34. Recognizing the Conservation Commission and Board of Health acted nearly immediately on any application of Ms. Newman, but such Boards simply failed to act when the Allens submitted applications, the Allens requested that the Department of

Environmental Protection ("DEP") issue Superseding Orders of Conditions for the Allens proposed house, septic system, and pier in November, 1998.

35. The Southeast Regional Office of DEP accepted the Allens request to consider the issuance of a Superseding Order of Conditions in January, 1999.

36. An on-site meeting was held by DEP in early, 1999 to "evaluate" the Allens project in 1999.

37. At the on-site meeting, DEP and members of the Truro Conservation Commission observed individuals excavating and repairing the septic system for the adjacent Pamet Harbor Yacht Club.

38. No permits were obtained for such work, but no enforcement action was initiated against teh Yacht Club.

39. DEP staff and the Truro Conservation Commission observed the conditions on the adjacent Newman property including that the property had only a few shrubs and beach grass present.

40. In 1999, the Barnstable Superior Court ruled that the Truro Board of Health acted arbitrarily and capriciously when it failed to act on the Allens septic variance application within 45 days of receipt and then attempted to deny that application after expiration of the 45 day time period to act in M.G.L. ch. 11, Sec. 31E.

41. Having obtained their variances, the Allens applied in June, 1999, for DEP

approval of the variance to construct a system without a "reserve area" as required by DEP regulations.

42. The plan submitted by the Allens to DEP contained the same wetland resource areas (coastal bank and land subject to coastal storm flowage) in the same locations as were found by DEP in 1993 when it rejected a contention by the Truro Conservation Commission that the Property contained a "coastal dune."

43. On January 18, 2000, by letter from Elizabeth Kouloheras, the Southeast Regional Office of DEP issued a variance to construct the septic system proposed by the Allens.

44. No party appealed DEP's decision to issue the variance.

45. On June 8, 2000, by letter from Elizabeth Kouloheras, the Southeast Regional Office of DEP issued two superseding orders of conditions authorizing the Allens' house, septic system and pier.

46. The DEP concluded that the Property did not contain a "coastal dune" and authorized the construction of septic system on it.

47. In June, 2000, the Town of Truro and the Pamet Harbor Yacht Club requested an adjudicatory hearing on the two Superseding Ordes of Conditions issued by DEP alleging that the Allens' property contains a "coastal dune."

48. In November, 2000, a prehearing conference was scheduled for the appeals of

the superseding orders of conditions.

49. At this time, Brooke Newman filed a motion to intervene in the proceeding which was ultimately granted and alleged that there existed a "coastal dune" on both the Property and her adjacent property.

50. The allegation was somewhat perplexing as Ms. Newman never showed a coastal dune on any of her filings with the Truro Conservation nor does the development of her property comply with the performance standards for "coastal dunes"

51. From 1996 to this time period, numerous meetings were held with DEP and the U.S. Army Corps of Engineers regarding the M.G.L. ch. 91 license application and a related permit application for the Allens' proposed pier extension.

52. At these meetings, DEP informed the Army Corps that it intended to issue the M.G.L. ch. 91 permit to the Allens.

53. Notwithstanding these statements, the DEP issued a notice of denial of the M.G.L. ch. 91 license to the Allens on November 30, 2000, for which the Allens requested an adjudicatory hearing before DEP.

54. In early 2001, the Health Agent of the Town of Truro insisted that the Allens modify the DEP septic variance because the building and landscaping on the Superseding Order of Conditions plan differed from that in the DEP septic variance.

55. In response, the Allens requested that the DEP variance be modified to incorporate the building and landscaping changes and DEP issued an amended variance in April, 2001.

56. The Plaintiff Town of Truro then filed an M.G.L. ch. 30A, Sec. 14 appeal in Barnstable County Superior Court (No. 01-347) challenging this decision.

57. Contemporaneously, Brooke Newman filed a similar appeal in Suffolk County Superior Court (No. 01-2419F).

58. In October, 2001, the Allens wrote to the Truro Harbormaster with a copy to Town Counsel, which complained that boats were being moored on town authorized moorings on the Allens tidal flats (*i.e.*, land owned by the Allens between mean high and mean low water).

59. In late January, 2002, the Allens learned that the Town of Truro intended to take the tidal flats on their property and adjacent land owners by eminent domain.

60. The purpose of this action was to prevent the Allens from constructing their proposed pier and to eliminate their complaints regarding the Town using the flats for moorings and was done to benefit the Pamet Harbor Yacht Club.

61. The Order of Taking was recorded in the Barnstable Registry of Deeds on February 15, 2002.

62. The Allens were offered a payment of \$2,500 for the land which was the lowest

of any property owners and approximately ten percent of the amounts paid to their residential neighbors including Ms. Newman.

63. The purported reason for the lesser payment was that the Allens retained an easement in the location of an existing dilapidated pier which only reaches the water during less than one quarter of the tidal cycle and serves no purpose other than as a viewing platform.

64. In April and May of 2002, Town Counsel wrote to the Allens and stated that the Allens probably required a variance from the zoning bylaw to expand their home or, at a minimum, a special permit, even though no neighbors had been required to do so for their expansions.

65. In April, 2003, the Town of Truro filed a motion to remand its Barnstable Superior Court action on the DEP septic variance modification arguing that the Property contains a septic system located within a "coastal dune" even though its Boards have never applied coastal dune standards to any property in the area

66. That motion was denied as it was unsupported by affidavits.

67. In early, 2004, the Town renewed its motion to remand (which remains pending) arguing that the Allens misled regulatory authorities in not showing a "coastal dune" on the Property when in fact the Allens showed wetland resources that had been approved by DEP in 1993 when the DEP rejected the Truro Conservation Commissions' argument that the Property contained a "coastal dune."

68. In May, 2004, the Allens requested that the Conservation Commission initiate enforcement against Brooke Newman for failure to comply with the terms of her order of conditions and failing to comply with "coastal dune" performance standards which the Commission wished to have applied to the adjacent Allen Property.

69. The information submitted to the Commission during 2004 demonstrated that Ms. Newman: (i) placed more than two feet of additional fill on her property which was not shown in any plan; (ii) planted trees and constructed a fence which were not shown on her plans and were inconsistent with the representation that only "native grasses" would be planted in her notices of intent; (iii) placed large boulders onto the property; and (iv) took other actions which did not comply with coastal dune performance standards even though Ms. Newman has alleged that her property and Ms. Cordi-Allens contain a "coastal dune."

70. Even though these actions were wholly inconsistent with the plan approved for Ms. Newman's property, the Commission voted to issue a certificate of compliance that the work performed by Ms. Newman was in "substantial compliance" with her approved plans.

71. With respect to the allegations regarding "coastal dunes," the Commission stated that they would not apply coastal dune standards to the Newman property.

72. In July, 2004, the Pamet Harbor Yacht Club constructed, among other things, a stairway across the beach and installed propane gas tanks in the flood plain without obtaining Truro Conservation Commission approval.

73. No enforcement action has been taken against the Yacht Club for such actions.

74. The Pamet Yacht Club has been serving food at its premises in the Summer and Fall of 2004 without obtaining the proper food service permits.

75. Such information is widely known and has been published in the Cape Cod Times, but no enforcement action has been taken.

76. In July, 2004, the Allens requested authority to install floats off of the "viewing platform" in pier easement area.

77. Town counsel responded that such licenses would not be issued as the Town owned the tidelands in which they would be located.

78. However, the Town of Truro has licensed for at least two years floats of the Pamet Harbor Yacht Club which extend beyond their easement.

79. By letter dated July 26, 2004, Barbara Cordi-Allen requested that the Building Commissioner revoke the building permit issued to Brooke Newman as she had not obtained a special permit or variance.

80. The request cited letters to the Allens' counsel from town counsel stating that the Allens required a variance or special permit.

81. The Building Commissioner failed to respond within the statutorily required 14 day period.

82. Finally, after numerous telephone calls to town counsel, the Building Commissioner issued a letter on October 19, 2004, denying the request and essentially stating that his predecessor must have found that a special permit or variance was not required.

83. On October 27, 2004, Barbara Cordi-Allen filed an appeal of that decision with the Truro Zoning Board of Appeals and filed a notice with the Barnstable County Registry of Deeds on the following day.

84. Even though the Building Commissioner waited nearly three months to respond, town counsel quickly informed the Truro Zoning Board of Appeals that the appeal was untimely because the appeal had not been filed in Superior Court by October 28, 2004, citing a case that does not even address the issue of whether a timely filed administrative proceeding may continue.

85. The Truro Zoning Board of Appeals held a public hearing in December, 2004, and again on January 10, 2005.

86. On January 19, 2005, a decision was filed with the Truro Town Clerk denying Ms. Cordi-Allen's appeal. (copy attached as Exhibit One).

87. The decision simply holds without findings that the Building Commissioner acted properly in issuing the building permit and that the appeal was untimely.

88. Plaintiff Barbara Cordi-Allen is aggrieved by the decision of the Truro Zoning

Board of Appeals.

COUNT I

Appeal of Zoning Board of Appeals Decision

M.G.L. ch. 40a, Sec. 17

89. Plaintiff Barbara Cordi-Allen repeats the allegations in paragraphs 1 through 88 set forth above and further alleges as follows.

90. The Zoning Board of Appeals' decision was not supported by the facts or law.

91. The issuance of the building permit to Brooke Newman without a variance or special permit exceeded the authority of the Building Commissioner.

92. The Zoning Board of Appeals' decision was arbitrary and capricious, constituted an error of law, constituted an abuse of discretion, exceeded the authority of the Commission, was against the weight of evidence presented at the public hearing, and was otherwise unlawful.

WHEREFORE, Barbara Cordi-Allen requests that this court enter judgment as follows:

- a. That the decision of the Zoning Board of Appeals was:
 - i. in excess of the Commission's authority or jurisdiction,
 - ii. based upon error of law,
 - iii. made upon unlawful procedure, and/or
 - iv. is unsupported by factual evidence.
- b. Issue an Order:
 - i. reversing the decision,

ii. requiring that the Zoning Board of Appeals enforce the Zoning Bylaw against Ms. Newman;

c. Provide such other relief as this court deems meet and just under the circumstances.

COUNT II

Federal Civil Rights -- 28 U.S.C. 1983

93. Plaintiffs John Allen and Barbara Cordi-Allen repeat the allegations in paragraphs 1 through 92 set forth above and further allege as follows.

94. Barbara Cordi-Allen is an American citizen of Lebanese descent.

95. John Allen is Ms. Cordi-Allens' husband.

96. The Allens have been discriminated against due to Ms. Allens' national origin in that the Town of Truro has applied differing standards to the applications for regulatory permits to the Allens than they have applied to others of non-Lebanese descent resulting in a violation of the equal protection and due process rights of the Allens.

97. The actions of the Town of Truro have been irrational and wholly arbitrary resulting in a violation of the equal protection and due process rights of the Allens.

98. The actions of the Town of Truro and its various boards are intentional and occur under color of state law.

99. The Allens have been unable to develop the Property to the extent allowed by

law and have lost their full use and enjoyment of the Property and have been required to incur attorneys fees and other costs resulting in damages in excess of \$5,000,000.00.

99. The actions of the Town of Truro have been intentional discrimination and are intended to protect the interests of the Pamet Harbor Yacht Club and its members who include many of the most influential citizens of Truro.

100. Such actions entitle the Allens to punitive damages and the Allens request that such damages be allowed in an amount up to three times the actual damages of the Allens.

101. The actions of the Town of Truro have resulted in a temporary taking of the Allens property.

102. The Town of Truro and its Boards have violated the civil rights of Allens protected by the United States Constitution.

103. Defendant Town of Truro is liable for the damages incurred by the Plaintiffs caused by its and its Boards' or Commissions' violation of the Allens' civil rights.

WHEREFORE, Allens requests that this court enter judgment that:

- a. The actions of the Defendant Truro and its Boards and Commissions violated federal protected civil rights of the Allens;
- b. The Allens are entitled to compensatory and punitive damages of

at least 20 million dollars;

c. Award attorneys fees to the Allens as provided in 28 U.S.C. 1983;
and

d. Providing such other relief as this court deems meet and just
under the circumstances.

COUNT III

State Civil Rights -- M.G. L. c. 12, §§ 11H, 11I

104. Plaintiffs John Allen and Barbara Cordi-Allen repeat the allegations in paragraphs 1 through 104 set forth above and further alleges as follows.

105. Barbara Cordi-Allen is an American citizen of Lebanese descent.

106. John Allen is Ms. Cordi-Allens' husband.

107. The Allens have been discriminated against due to Ms. Allens' national origin in that the Town of Truro has applied differing standards to the applications for regulatory permits to the Allens than they have applied to others of non-Lebanese descent resulting in a violation of the equal protection and due process rights of the Allens.

108. The actions of the Town of Truro have been irrational and wholly arbitrary resulting in a violation of the equal protection and due process rights of the Allens.

109. The Plaintiffs attempts to exercise the rights have been interfered with by the Town of Truro and that interference has been through the use of threats, coercion and

intimidation.

110. The Allens have been unable to develop the Property to the extent allowed by law and have lost their full use and enjoyment of the Property and have been required to incur attorneys fees and other costs resulting in damages in excess of \$5,000,000.00.

111. The actions of the Town of Truro have been intentional discrimination and are intended to protect the interests of the Pamet Harbor Yacht Club and its members who include many of the most influential citizens of Truro.

112. Such actions entitle the Allens to punitive damages and the Allens request that such damages be allowed in an amount up to three times the actual damages of the Allens.

113. The actions of the Town of Truro have resulted in a temporary taking of the Allens property.

114. The Town of Truro and its Boards have violated the civil rights of Allens protected by the Massachusetts Constitution.

115. Defendant Town of Truro is liable for the damages incurred by the Plaintiffs caused by its and its Boards' or Commissions' violation of the Allens' civil rights.

WHEREFORE, Allens requests that this court enter judgment that:

- a. The actions of the Defendant Truro and its Boards and

Commissions violated state protected civil rights of the Allens;

b. The Allens are entitled to compensatory and punitive damages of at least 20 million dollars;

c. Award attorneys fees to the Allens as provided in M.G.L. ch. 12, Sec. 11H, and 11I; and

d. Providing such other relief as this court deems meet and just under the circumstances.

COUNT IV

Reversal of Eminent Domain

116. Plaintiffs John Allen and Barbara Cordi-Allen repeat the allegations in paragraphs 1 through 115 set forth above and further alleges as follows.

117. The Allens "flats" and tideland property was taken in violation of the United States and Massachusetts Constitution.

118. The taking by eminent domain did not serve a public purpose, but rather was undertaken to transfer control over those flats and tidelands for the private use of the Pamet Harbor Yacht Club.

WHEREFORE, Allens requests that this court enter judgment that:

- a. That the eminent domain taking was:
 - i. in violation of constitutional provisions,

- ii. in excess of the Commission's authority or jurisdiction,
 - iii. based upon error of law,
 - iv. made upon unlawful procedure, and/or
 - v. is unsupported by factual evidence.
- b. Issue an Order reversing the eminent domain taking of the Allens tidelands; and
- c. Provide such other relief as this court deems meet and just under the circumstances.

Count V - Declaratory Judgment

119. Plaintiffs repeat the allegations in paragraphs 1 through 118 set forth above and further allege as follows.

120. There exists a controversy between the Plaintiffs and the Defendant Town of Truro regarding the Property and whether the Town violated the Allens constitutionally protected rights.

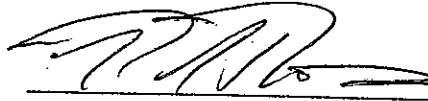
121. The Plaintiffs seek a declaration that the Town of Truro and its Boards and Commissions have violated the constitutionally protected rights:

WHEREFORE, Allens requests that this court enter judgment that:

- a. the Town of Truro and its Boards and Commissions have violated the constitutionally protected rights of the Allens; and/or

b. for such other declaratory relief as may be necessary to protect such rights.

Respectfully Submitted,

A handwritten signature in black ink, appearing to read 'Paul Revere, III', written over a horizontal line.

Paul Revere, III
(BBO #636200)
Law Offices of Paul Revere, III
226 River View Lane
Centerville, Massachusetts 02630
(508) 778-7126

Dated: February 8, 2005

EXHIBIT ONE

DECISION OF THE BOARD OF APPEALS OF TRURO, MASSACHUSETTS

Property Owner(s) and/or Applicant(s): Barbara Cordi-Allen, (by agt/atty Paul Revere, III)Property Location: 3 Yacht Club Rd.Atlas Sheet: 50 Parcel: 20 (Ref. 2004-014ZBA) Hearing Date: Monday, January 10, 2005 (as continued from the Meeting of Monday, December 6, 2004.)

Special Permit ☐
 Variance ☐
 Building Commissioner Decision ☐
 Other ☒

Vote: 5 Approve ☒
0 Disapprove ☐
 Abstain ☐

(Unanimous vote on Motion to Deny the application)

Motion (Conlon; 2nd Pope): I hereby Move to Deny the application of Barbara Cordi-Allen, appealing the decision of the Building Commissioner dated October 19, 2004 upholding the issuance of a building permit on October 28, 1998 for property owned by Brooke Newman, Located at 3 Yacht Club Rd (Atlas Sheet 50, Parcel 20)[2004-014/ZBA], on the following grounds:

- 1) The Building Commissioner was fully authorized to issue the building permit to Ms. Newman pursuant to the provisions of Section VIII-B.2 of the former Truro Zoning Bylaws because Ms. Newman's project involved the alteration of a pre-existing, non-conforming structure and Section VIII-B.2 authorized the Building Inspector to approve and issue a building permit for a proposed repair, reconstruction, alteration or structural change of a pre-existing, non-conforming single-family structure if the Building Commissioner determines that the proposal will not be "substantially more detrimental to its neighborhood than the existing nonconforming structure and will not increase the nature or extent of the nonconformity;"
- 2) The appeal is untimely pursuant to the provisions of General Laws, Chapter 40A, Section 7 because the subject building permit was issued and the land improved over six (6) years ago, and therefore, the issue presently on appeal, namely whether the Building Commissioner acted within his authority on October 28, 1998, is now time-barred and moot.

I hereby certify this as a true and accurate record of the Board of Appeals.

Signature

Date

Received, Office of the Town Clerk:

Signature

Date

I hereby certify that this decision was filed with the Office of the Town Clerk on _____ and 20 (twenty) days have elapsed since the date of filing, and no appeal has been filed.

Signature

Date

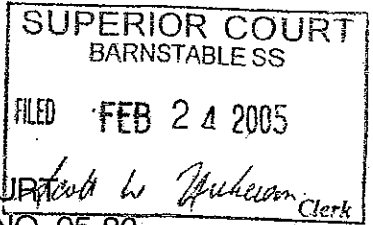
NOTE: Any person aggrieved by a decision of the Zoning Board of Appeals may appeal to the Superior or Land Court by bringing action within twenty days after the decision has been filed with the Town Clerk of Truro. (Massachusetts General Laws, Chapter 40A, Section 17.)

A COPY OF THIS DECISION MUST BE FILED WITH THE REGISTER OF DEEDS
OF BARNSTABLE COUNTY BY THE APPLICANT

COMMONWEALTH OF MASSACHUSETTS

BARNSTABLE, ss.

SUPERIOR COURT
CIVIL ACTION NO. 05-80



Barbara Cordi-Allen and John Allen

Plaintiffs

v.

Joseph R. Conlon, Arthur F. Hultin,
Norman H. Pope, Keith S. Althaus, and
Marinna Matricardi as They are
Members And Are Collectively
the Truro Zoning Board of Appeals,
Brooke Newman, and the Town of
Truro, Massachusetts

Defendants

**PROOF OF SERVICE AFFIDAVIT
OF PAUL REVERE, III
(M.G.L. ch. 40A, Sec. 17)**

1. I, Paul Revere, III, Esq., make this affidavit based upon my personal knowledge and, if sworn as a witness, I can testify to the facts stated herein.
2. On February 8, 2005, I filed the complaint in the above captioned matter on behalf of Barbara Cordi-Allen with the Clerk of the Barnstable Superior Court by hand delivery challenging a decision of the Zoning Board of Appeals of Truro in Count I.
3. In accordance with M.G.L. ch. 40A, Sec. 17, I also delivered a notice of appeal and a copy of the complaint by hand delivery to the Town Clerk for the Town of Truro on February 8, 2005.

4. A date stamped copy of the notice of appeal is attached as Exhibit One.
5. In accordance with M.G.L. ch. 40A, Sec. 17, I sent a summons, tracking order, notice of appeal, civil action cover sheet, and a copy of the complaint in this matter to each individual defendant member of the Truro Zoning Board of Appeals and teh Defendant Brooke Newman by certified mail.
6. Copies of the certified mail receipts are attached as Exhibit Two.

Signed under pains and penalties of perjury.



Paul Revere, III
(BBO #636200)
Law Offices of Paul Revere, III
226 River View Lane
Centerville, Massachusetts 02630
(508) 778-7126

Date: February 18, 2005

EXHIBIT ONE

COMMONWEALTH OF MASSACHUSETTS

BARNSTABLE, ss.

SUPERIOR COURT
CIVIL ACTION NO. ~~05~~

05-80

Barbara Cordi-Allen and John Allen

Plaintiffs

v.

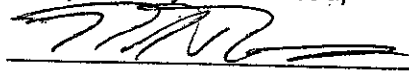
Joseph R. Conlon, Arthur F. Hultin,
Norman H. Pope, Keith S. Althaus, and
Marinna Matricardi as They are
Members And Are Collectively
the Truro Zoning Board of Appeals,
Brooke Newman, and the Town of
Truro, Massachusetts

Defendants

NOTICE OF APPEAL

The Plaintiff in the above captioned matter hereby gives notice pursuant to M.G.L. ch. 40A, Sec. 17, to the Town Clerk of the Town of Truro that a complaint was filed seeking review of a January 19, 2005, decision of the Truro Zoning Board of Appeals and that such complaint was filed on February 8, 2005. A copy of said complaint is attached.

Respectfully Submitted,



Paul Revere, III
(BBO #636200)
Law Offices of Paul Revere, III
226 River View Lane
Centerville, Massachusetts 02630
(508) 778-7126

Dated: February 8, 2005

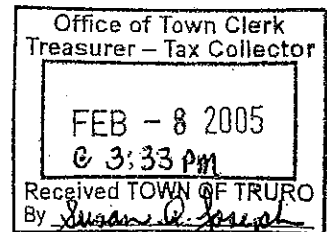


EXHIBIT TWO

U.S. Postal Service™
CERTIFIED MAIL™ RECEIPT
 (Domestic Mail Only; No Insurance Coverage Provided)

For delivery information visit our website at www.usps.com

OFFICIAL USE

| | | |
|--|---------|---------------|
| Postage | \$ 1.52 | UNIT ID: 0601 |
| Certified Fee | 2.30 | |
| Return Receipt Fee (Endorsement Required) | | |
| Restricted Delivery Fee (Endorsement Required) | | |
| Total Postage & Fees | \$ 3.82 | |

Postmark Here
 Clerk: BTPRPO
 02/18/05

Sent To: Brooke Newman
 Street, Apt. No., or PO Box No. 273 Roaring Fork Dr.
 City, State, ZIP+4 Aspen CO 81611

PS Form 3800, June 2002 See Reverse for Instructions

U.S. Postal Service™
CERTIFIED MAIL™ RECEIPT
 (Domestic Mail Only; No Insurance Coverage Provided)

For delivery information visit our website at www.usps.com

OFFICIAL USE

| | | |
|--|---------|---------------|
| Postage | \$ 1.29 | UNIT ID: 0601 |
| Certified Fee | 2.30 | |
| Return Receipt Fee (Endorsement Required) | | |
| Restricted Delivery Fee (Endorsement Required) | | |
| Total Postage & Fees | \$ 3.59 | |

Postmark Here
 Clerk: BTPRPO
 02/18/05

Sent To: Joseph R. Cowlaw
 Street, Apt. No., or PO Box No. 408 Route 6
 City, State, ZIP+4 Town, MA 02666

PS Form 3800, June 2002 See Reverse for Instructions

U.S. Postal Service™
CERTIFIED MAIL™ RECEIPT
 (Domestic Mail Only; No Insurance Coverage Provided)

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OFFICIAL USE

| | | |
|--|---------|---------------|
| Postage | \$ 1.52 | UNIT ID: 0601 |
| Certified Fee | 2.30 | |
| Return Receipt Fee (Endorsement Required) | | |
| Restricted Delivery Fee (Endorsement Required) | | |
| Total Postage & Fees | \$ 3.82 | |

Postmark Here
 Clerk: DGF100
 02/18/05

Sent To: Arthur F. Holtan
 Street, Apt. No., or PO Box No. 11 Lawrence Way
 City, State, ZIP+4 Town, MA 02666

PS Form 3800, June 2002 See Reverse for Instructions

U.S. Postal Service™
CERTIFIED MAIL™ RECEIPT
 (Domestic Mail Only; No Insurance Coverage Provided)

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OFFICIAL USE

| | | |
|--|---------|---------------|
| Postage | \$ 1.52 | UNIT ID: 0601 |
| Certified Fee | 2.30 | |
| Return Receipt Fee (Endorsement Required) | | |
| Restricted Delivery Fee (Endorsement Required) | | |
| Total Postage & Fees | \$ 3.82 | |

Postmark Here
 Clerk: DGF100
 02/18/05

Sent To: Norman H. Pope
 Street, Apt. No., or PO Box No. 5 Collins Rd.
 City, State, ZIP+4 Town, MA 02666

PS Form 3800, June 2002 See Reverse for Instructions

U.S. Postal Service™
CERTIFIED MAIL™ RECEIPT
 (Domestic Mail Only; No Insurance Coverage Provided)

For delivery information visit our website at www.usps.com

OFFICIAL USE

| | | |
|--|---------|---------------|
| Postage | \$ 1.52 | UNIT ID: 0601 |
| Certified Fee | 2.30 | |
| Return Receipt Fee (Endorsement Required) | | |
| Restricted Delivery Fee (Endorsement Required) | | |
| Total Postage & Fees | \$ 3.82 | |

Postmark Here
 Clerk: DGF100
 02/18/05

Sent To: Keith S. Althaus
 Street, Apt. No., or PO Box No. 46 Shore Rd.
 City, State, ZIP+4 Town, MA 02666

PS Form 3800, June 2002 See Reverse for Instructions

U.S. Postal Service™
CERTIFIED MAIL™ RECEIPT
 (Domestic Mail Only; No Insurance Coverage Provided)

For delivery information visit our website at www.usps.com

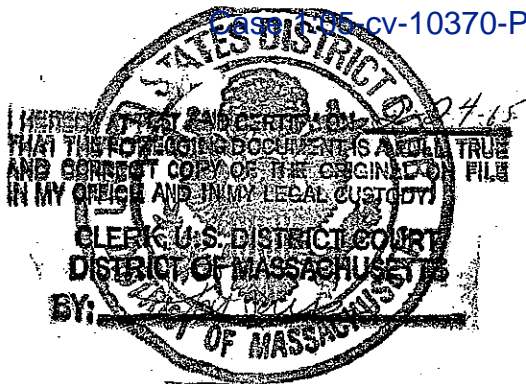
OFFICIAL USE

| | | |
|--|---------|---------------|
| Postage | \$ 1.52 | UNIT ID: 0601 |
| Certified Fee | 2.30 | |
| Return Receipt Fee (Endorsement Required) | | |
| Restricted Delivery Fee (Endorsement Required) | | |
| Total Postage & Fees | \$ 3.82 | |

Postmark Here
 Clerk: DGF100
 02/18/05

Sent To: Marina Matricardi
 Street, Apt. No., or PO Box No. 24 Fisherman's Rd.
 City, State, ZIP+4 Town, MA 02666

PS Form 3800, June 2002 See Reverse for Instructions



UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

Civil Action No.

05-80

FILED
IN CLERKS OFFICE

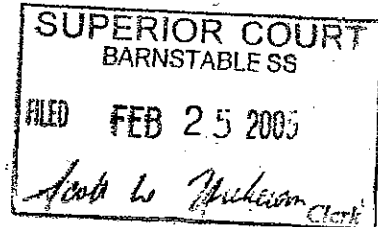
2005 FEB 24 P 3:34

U.S. DISTRICT COURT
DISTRICT OF MASS.

BARBARA CORDI-ALLEN AND JOHN ALLEN
Plaintiffs,

v.

JOSEPH R. CONLON, ARTHUR F. HUTLIN,
NORMAN H. POPE, KEITH S. ALTHAUS and
MARINNA MATRICARDI as they are members and are
collectively the TRURO ZONING BOARD OF
APPEALS, BROOKE NEWMAN, and the TOWN OF
TRURO, MASSACHUSETTS
Defendants,



05-10370 PBS

DEFENDANTS' NOTICE OF REMOVAL OF ACTION FROM STATE COURT

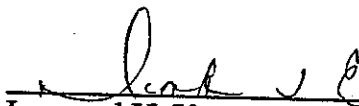
Pursuant to 28 U.S.C. §1441(b) and 1446, Defendants petition for removal of this action to the United States District Court for the District of Massachusetts. As grounds therefore, the Defendants state as follows:

1. On or about February 8, 2005, the Plaintiffs filed this suit in the Barnstable Superior Court, Civil Action No.: BACV2005-00080.
2. On or about February 8, 2005 the Plaintiffs' Complaint was served upon the Defendant Town of Truro, Massachusetts. Attached as Exhibit A is a copy of the Plaintiffs' Complaint which was served upon the Defendant Town of Truro, Massachusetts.
3. In their Complaint, the Plaintiffs allege [42] U.S.C. §1983 provides a cause of action in this matter because Ms. Cordi-Allen has been discriminated against because she is of Lebanese descent and because of her national origin the Defendant Town of Truro has "applied differing standards to the applications for regulatory permits to the Allens than they have

applied to others of non-Lebanese descent resulting in a violation of the equal protection and due process rights of the Allens."

4. Because this matter is an action arising under federal law of which this Court has original jurisdiction, as authorized by 28 U.S.C. §1331, it is subject to removal under 28 U.S.C. §1441(b).
5. This Notice of Removal is being filed within the time period required by law, 28 U.S.C. §1446(b).

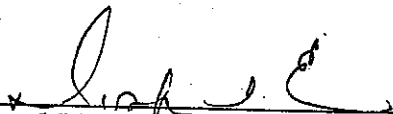
Respectfully submitted,
The Defendants,
Joseph R. Conlon, Arthur F. Hultin, Norman
H. Pope, Keith S. Althaus and Marinna
Matricardi as they are members and are
collectively the Truro Zoning Board of
Appeals, and the Town of Truro,
Massachusetts
By their attorneys,



Leonard H. Kesten, BBO# 542042
Deborah I. Ecker, BBO# 554623
BRODY, HARDOON, PERKINS & KESTEN, LLP
One Exeter Plaza, 12th Floor
Boston, MA 02116
(617) 880-7100

DATED: February 24, 2005

Respectfully submitted,
The Defendants,
Joseph R. Conlon, Arthur F. Hutlin, Norman
H. Pope, Keith S. Althaus and Marina
Matricardi as they are Members and
Collectively the Truro Zoning Board of
Appeals and the Town of Truro, Massachusetts
By their attorneys,



Leonard H. Kesten, BBO# 542042
Deborah I. Ecker, BBO# 554623
BRODY, HARDOON, PERKINS & KESTEN, LLP
One Exeter Plaza, 12th Floor
Boston, MA 02116
(617) 880-7100

DATED: February 25, 2005

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

CIVIL ACTION NO: 05-10370PBS

BARBARA CORDI-ALLEN AND
JOHN ALLEN,
Plaintiffs,

VS.

JOSEPH R. CONLON, ARTHUR F. HUTLIN,
NORMAN H. POPE, KEITH S. ALTHAUS,
And MARINNA MATRICARDI as they are
Members and collectively the TRURO
ZONING BOARD OF APPEALS AND THE
TOWN OF TRURO, MASSACHUSETTS,
AND BROOKE NEWMAN,
Defendants

AFFIDAVIT OF PATRICIA PAJARON, CONSERVATION AGENT
FOR THE DEFEANDANT TOWN OF TRURO

Now comes Patricia Pajaron, Conservation Agent for the Town of Truro, and upon oath does depose and state the following:

1. My name is Patricia Pajaron; I am an adult; I am presently employed by the Town of Truro as its Health and Conservation Agent; as Health and Conservation Agent, part of my duties include serving as Keeper of the Records for the Truro Conservation Commission;
2. Attached hereto as Exhibit A is a true and accurate copy of the Site Plan for the Perry property located at 37 Corn Hill Road in Truro, Massachusetts, last revised May 2, 2006; this Site Plan reflects the following information:
 - a. the property is located on Barrier Beach TR-3 and is located within 100' of a tidal creek that is a tributary of the Pamet River known locally as the "Little Pamet;"

- b. the Perry's proposal as shown on the Site Plan includes the construction of a single family, one bedroom dwelling; its footprint is approximately 810 s.f. in area and the structure is proposed to be constructed approximately 78' from the edge of the creek at its closest location;
 - c. a dirt road lies between the proposed construction and the creek;
 - d. the flood elevation for this property is Elevation 11';
 - e. the construction is proposed to be elevated on a wood piling foundation, with a top of piling finished elevation of 12.0', leaving a minimum of 2' between the bottom of the dwelling and the landform below;
3. this Site Plan was approved by the Commission at its hearing on May 1, 2006 and construction on the Perry residence has not yet begun on locus;
4. Attached hereto as Exhibit B are photographs which accurately depicts the Perry property as of the date they were taken, May 23, 2006; the top set of photos depict Corn Hill Road on the far right (the paved road), with the area of proposed construction in the middle and the carpath labeled "Dirt Road" on the plan shown on the far left; the bottom set of photos depict the "Dirt Road" on the left, the area labeled "Former Railroad R.O.W." on the plan in the center, and the "Tidal Creek" on the right; the area of proposed construction is shown to the far right on the bottom set of photographs;
5. attached hereto as Exhibit C is a true and accurate copy of the Site Plan for the Sexton Property located at 41 Ryder Beach Road in Truro, Massachusetts, last revised October 26, 1999 and approved by the Commission on November 17, 1999; the Site Plan shows the following information:
 - a. the Sexton property abuts Cape Cod Bay; the Site Plan reflects Mean High Water at elevation 6.4', a bottom of bank elevation at approximately 11' - 12', and a top of bank elevation at between 20' and 22'; the ground elevation in the area of the proposed construction is shown on the Site Plan as varying between 22' and 26';
 - b. the Sexton proposal included new construction in the form of an approximately 980 s.f. addition to their pre-existing dwelling and a 2 car garage, which structures were to be constructed well over 100' from Mean High Water (approximately 120' at its closest location) and approximately 70' from the top of bank shown on the Plan;

- c. notes on the Site Plan indicate that the proposed addition and garage are to be constructed on "piers or piles;"
6. The Sexton construction was completed and a Certificate of Compliance issued by the Commission on June 6, 2005 ;
7. Attached hereto as Exhibit D is a photograph which accurately depicts the Sexton property as of the date it was taken, May 23, 2006; the photograph depicts the completed Sexton dwelling on the far right, with a staircase leading to the beach; Cape Cod Bay appears to the far left of the photograph;
8. Attached hereto as Exhibit E is a true and accurate copy of a Site plan for the Brooke Newman property located at 3 Yacht Club Road in Truro, Massachusetts, last revised February 23, 1999 and approved by the Commission at its hearing on March 4, 1999 ;
9. The Newman property abuts the Plaintiff's property; the Site Plan shows the following information:
 - a. the Newman proposal shown on the plan includes the re-location of a pre-existing, two bedroom dwelling, a proposed 90 square foot addition, and an upgraded, Title 5 septic system;
 - b. the dwelling is proposed to be located approximately 183' from Mean High Water and 162' from the top of bank shown on the Site Plan; the proposed leaching component for the septic system is located over 225' from Mean High Water;
 - c. the structure is proposed on a crawl space foundation designed to meet building code requirements for construction in a flood zone; the plan indicates that the flood zone for this property is identified as elevation 12' and the house is shown to be constructed between elevation 10' and 12';
10. The construction shown on the approved Site Plan has been completed and a Certificate of Compliance issued on November 4, 2004;
11. Attached hereto as Exhibit F is a true and accurate copy of a Site and Sewage Plan with a final revision date of March 20, 2004, for the Landis property located at 80 Depot Road, Truro, Massachusetts;

12. the Landis property abuts the Newman property; the Site Plan was approved by the Commission at its meeting on April 12, 2004, and depicts the following information:

- a. The plan indicates that the proposal included an addition to an existing dwelling approximately 800 s.f. in area and the installation a sewer line to an existing Title 5 septic system;
- b. the addition was proposed to be located approximately 190' from Mean High Water;
- c. the foundation for the house was proposed to be elevated on pilings and in compliance with building code requirements for construction in a flood plain;
- d. the flood zone elevation for this property is at elevation 12'; the house was proposed to be constructed at a ground elevation of 12';

13. upon information and belief, construction on the Landis residence is substantially complete and the Commission has not yet issued a Certificate of Compliance;

14. attached hereto as Exhibit G is a true and accurate copy of the Site and Sewage Plan for the Plaintiff's property located at 5 Yacht Club Road in Truro, Massachusetts;

15. the Plaintiffs' property abuts the Newman property and the Site Plan depicts the following information:

- a. The Plaintiffs propose to construct a new, 1512 s.f. single family dwelling, with a new attached garage of approximately 1750 s.f. in area, a second dwelling 640 s.f. in area, and an inground pool of 450 s.f. in area, together with surrounding decks, a proposed driveway, and an upgraded, Title 5 septic system;
- b. All construction is proposed on solid foundations, including a concrete retaining wall for the septic system; the total square footage of new construction (including both dwelling units, the garage and pool) is shown as being approximately 4352 s.f. in area; scaling off the plan, the total area of disturbance within the limit of work line is estimated at 20,000 s.f. in area on the 24,473 s.f. lot;
- c. Construction is proposed to take place within approximately 20' of MHW on the plan at its closest location and within 3' of the top of Coastal Bank that is depicted on the plan; the leaching component is proposed to be located just over 115' from MHW;
- d. The flood elevation for this property is at elevation 12' and construction is proposed between elevation 8' and 10';

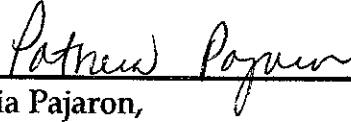
- e. The Site Plan also shows the Plaintiffs' existing 20' x 20' (400 s.f.) cottage on the property;

16. The Commission never reviewed this plan because the Plaintiffs submitted it to the Department of Environmental Protection for approval and not the Commission;

17. Upon information and belief, this proposal is presently pending review in an administrative proceeding before the Department of Environmental Protection and, as such, the project has not yet been constructed;

18. Attached hereto as Exhibit H is a photograph which accurately depicts the properties owned by Landis, Newman and the Plaintiffs; the photograph was taken in September of 2005 from the Town Landing located just North of these properties and it was taken at low tide; the Landis property is shown to the far left of the photograph and it shows the completed addition constructed on pilings; the Newman property is in the middle, showing the completed, two-story renovated dwelling; the Plaintiffs' existing 20' x 20' cottage and pier are shown to the right of the photograph; behind the Plaintiffs' cottage is the Pamet Harbor Yacht Club; the photograph depicts a wrack-line of seaweed in the area where Mean High Water was approximately located at the time the photograph was taken;

Signed under the pains and penalties of perjury on this 24th day of May, 2006.



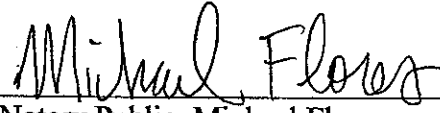
Patricia Pajaron,
Truro Health/Conservation Agent

COMMONWEALTH OF MASSACHUSETTS

Barnstable, ss.

May 24, 2006

On this 24th day of May, 2006, before me, the undersigned notary public, personally appeared Patricia Pajaron, who is known to me personally to be the person whose name is signed on the preceding or attached document, and who swore or affirmed to me that the contents of the document are truthful and accurate to the best of her knowledge and belief.



Notary Public: Michael Flores
My Commission Expires: 10/17/08

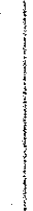
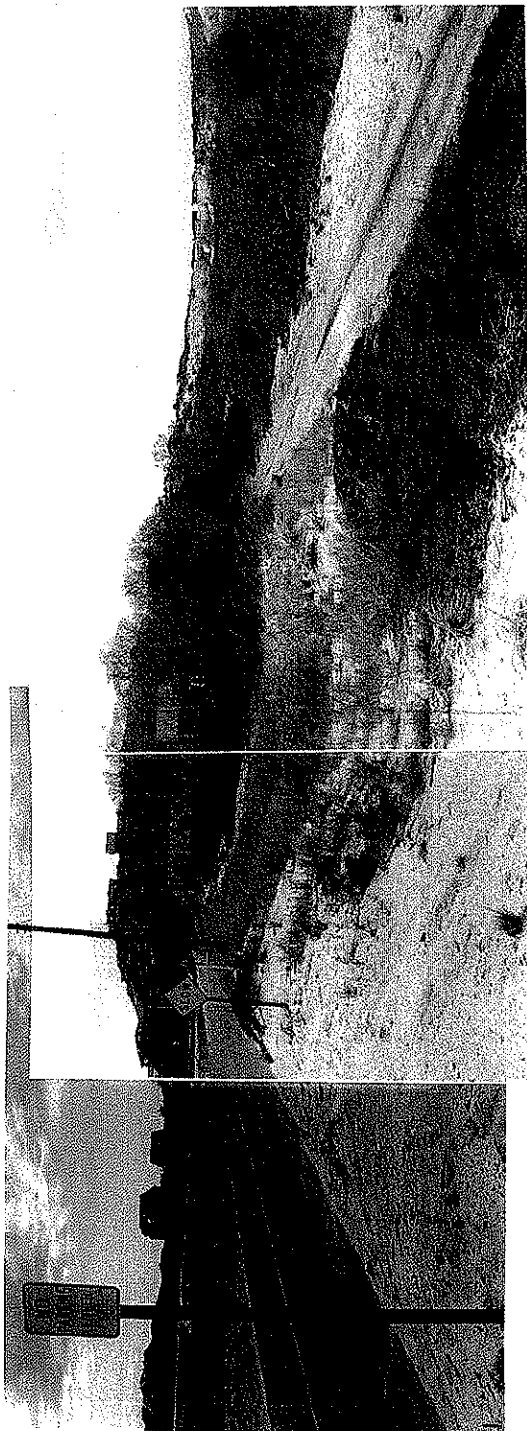
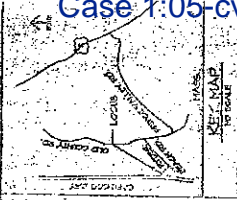
[illegible]

EXHIBIT
B

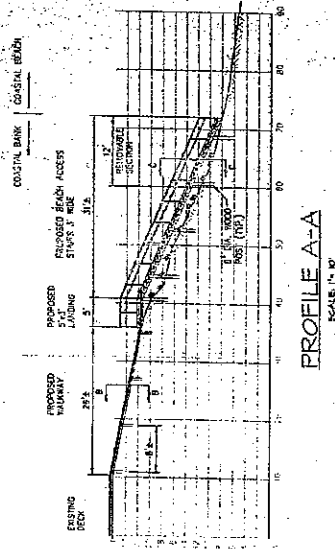




PLAN: REFERENCE

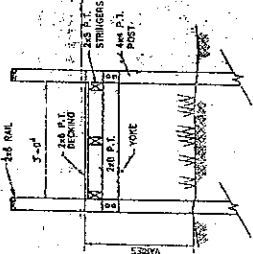
LCR, 1871A
DATE: 1/17/04
ANALYST: CRES M

WALKWAY DEVELOPMENT



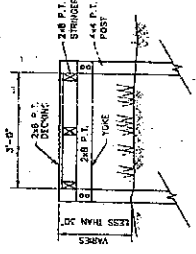
PROFILE A-A

SCALE 1' = 10'



STAIRS SECTION C-C

NOT TO SCALE



WALKWAY SECTION B-B

NOT TO SCALE

NOTES

- * POSTS TO BE HAND DRILL
- * TWIGS TO BE PRESSURE TREATED.
- * ALL METAL TO BE GALVANIZED.
- * NO EQUIPMENT ON BANKS OR BEACH.
- * ACCESS TO BE FROM UPLAND OF CRUISE'S PRIORITY
- * DISTURBED AREAS TO BE REVEGETATED AND
- * REVEGETATED TO MATCH EXISTING CONDITIONS.
- * END SECTION IS TO BE REMOVED WHEN NOT IN USE.

[illegible]

000064

6661 230 2

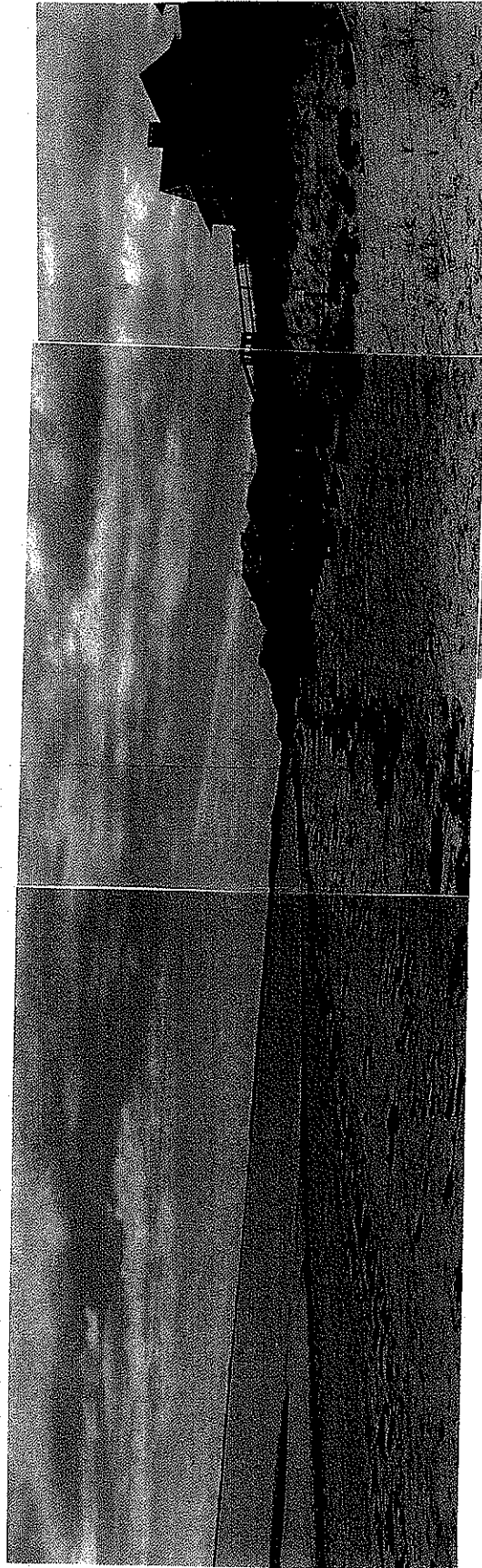
o

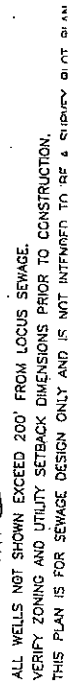
DRIVEWAY SECTION 1-1

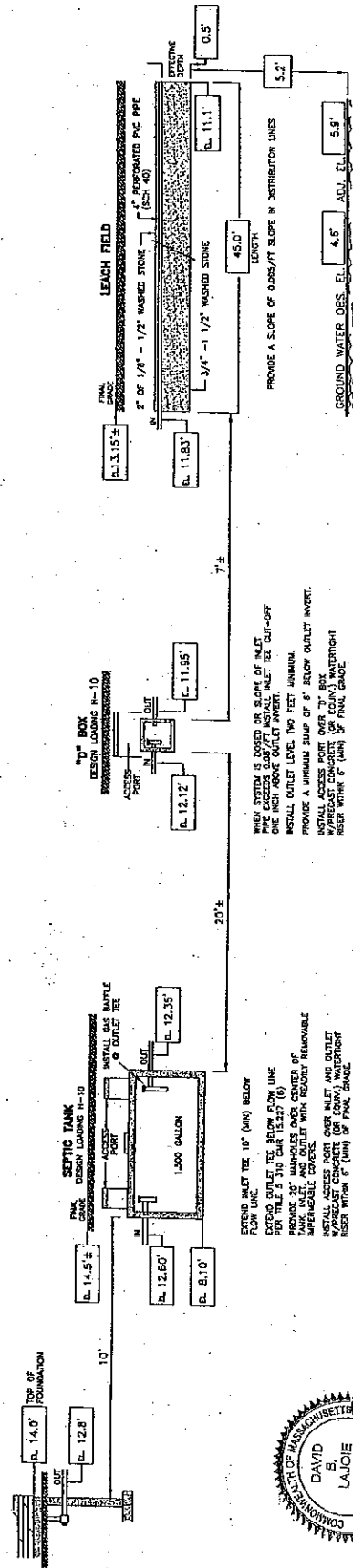
PLAN

SCALP 1" x 20"

RECEIVED
TRAVEL
COMMISSION
APR 01
8:00 PM '99







SECTION VIEW - SEPTIC SYSTEM COMPONENTS (N.T.S.)

DEEP OBSERVATION HOLE LOG

1. DATE: 2-18-97 TEST BY J. ELLIS WITNESS HEALTH DEPT.

| DEPTH | LOWEST ELEVATION | HORIZON | TEXTURE | STRUCTURE | WITNESS | COMMENTS |
|--------------|------------------|---------|------------------------|-----------|---------|----------|
| 0.0' | | A | LOAMY SAND | NO | NO | LOOSE |
| 0.5' | 9.5' | | | | | |
| 1.3' | 9.0' | B | LOAMY SAND | NO | NO | LOOSE |
| WATER @ 5.5' | 4.6' | C | COARSE SAND | NO | NO | LOOSE |
| 7.0' | 3.3' | | PERC @ 2.5' < 2 MIN/IN | | | |

2. DATE: 2-18-97 TEST BY J. ELLIS WITNESS HEALTH DEPT.

| DEPTH | LOWEST ELEVATION | HORIZON | TEXTURE | STRUCTURE | WITNESS | COMMENTS |
|--------------|------------------|---------|-------------|-----------|---------|----------|
| 0.0' | | A | LOAMY SAND | NO | NO | LOOSE |
| 1.0' | 9.1' | | | | | |
| 1.3' | 9.1' | B | LOAMY SAND | NO | NO | LOOSE |
| WATER @ 5.5' | 4.6' | C | COARSE SAND | NO | NO | LOOSE |
| 7.5' | 2.5' | | | | | |

GENERAL NOTES

- ALL CONTRACTORS AND/OR INSTALLERS ARE RESPONSIBLE FOR PROVIDING AND MAINTAINING A SAFE WORK AREA.
- CONTRACTORS AND/OR INSTALLERS: VERIFY ALL UTILITY LOCATIONS PRIOR TO CONSTRUCTION.
- CONTRACTORS AND/OR INSTALLERS: VERIFY ALL WASTE LINE LOCATIONS PRIOR TO CONSTRUCTION.
- CONSTRUCTION DETAILS TO BE IN ACCORDANCE WITH STATE SANITARY CODE 310 CMR 15.000 AND TOWN BOARD OF HEALTH REQUIREMENTS.
- ELEVATION DATUM IS FROM U.S.G.S. QUAD. MAP. (N.T.S.D.)
- MUNICIPAL WATER IS AVAILABLE ☐ YES ☒ NO
- ANY ALTERATIONS TO DESIGN MUST BE APPROVED BY FELCO, INC. AND TOWN BOARD OF HEALTH.
- ALL EXISTING SEWAGE TO BE PUMPED AND FILLED WITH CLEAN MEDIUM SAND.
- SEPTIC TANKS, DOSING CHAMBERS, GREASE TRAPS, AND DISTRIBUTION BOXES SHALL BE INSTALLED WATERTIGHT.
- WHEN SEPTIC TANK, DOSING CHAMBERS, GREASE TRAPS, AND DISTRIBUTION BOXES ARE PLACED IN FILL, PROVIDE A LEVEL STABLE BASE WHICH HAS BEEN COMPACTED TO A MINIMUM OF 95% PROCTOR DENSITY. CRUSHED STONE BASE IS OTHERWISE ADEQUATE.
- GROUND COVER OVER SEPTIC SYSTEM COMPONENTS SHALL NOT EXCEED 36".
- WHATEVER COVER LINES MUST CROSS WATER SUPPLY LINES, BOTH PIPES SHALL BE CONSTRUCTED TO CROSS AT A 90° ANGLE. PRESSURE PIPES OR EQUIV. AND SHALL BE PRESSURE TESTED TO ASSURE WATERTIGHTNESS.

DESIGN

FLOW DETERMINATION ☒ 2 BEDROOM DWELLING

GARBAGE GRINDER ☒ NO ☐ YES

FLOW RATE = 220 GAL/DAY

SEPTIC TANK SIZING:

220 x 2.0 = 440 GAL/DAY

USE: 1,500 GAL

LEACHING FACILITY CALCULATIONS:

PERCOLATION RATE IS < 5 MIN/INCH ☐ CLASS

BOTTOM = 450 x 0.74 = 333 GAL/DAY (S.F.)

USE: (1) 45' x 10' LEACH FIELD

W/ 0.5' EFFECTIVE DEPTH

RESERVE AREA:
= 30' LONG x 15' WIDE = 450 SF.

CONSTRUCTION NOTES

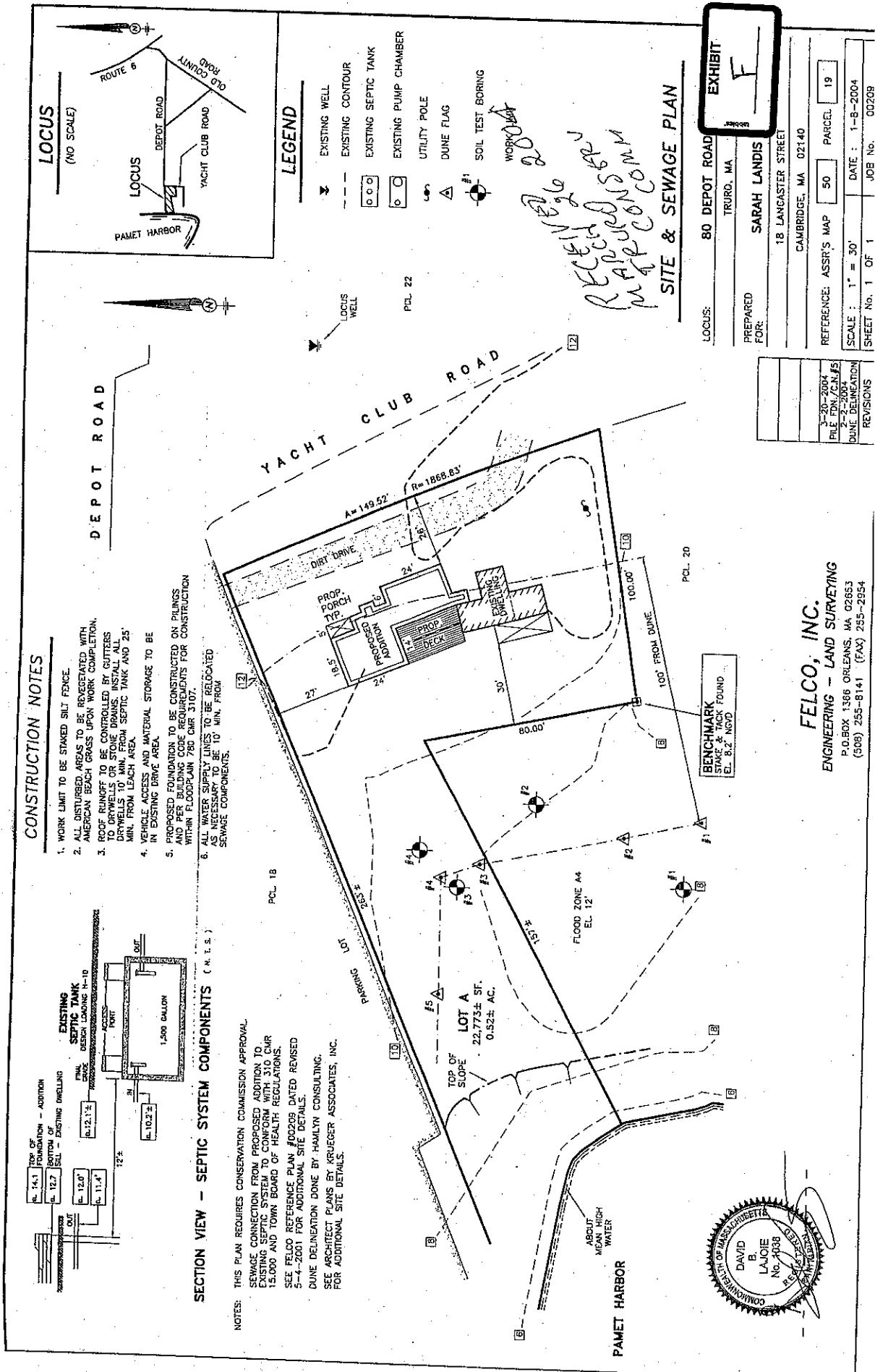
SEE SHEET #1

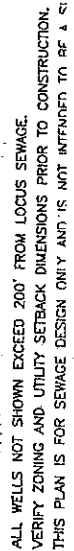
FELCO, INC.

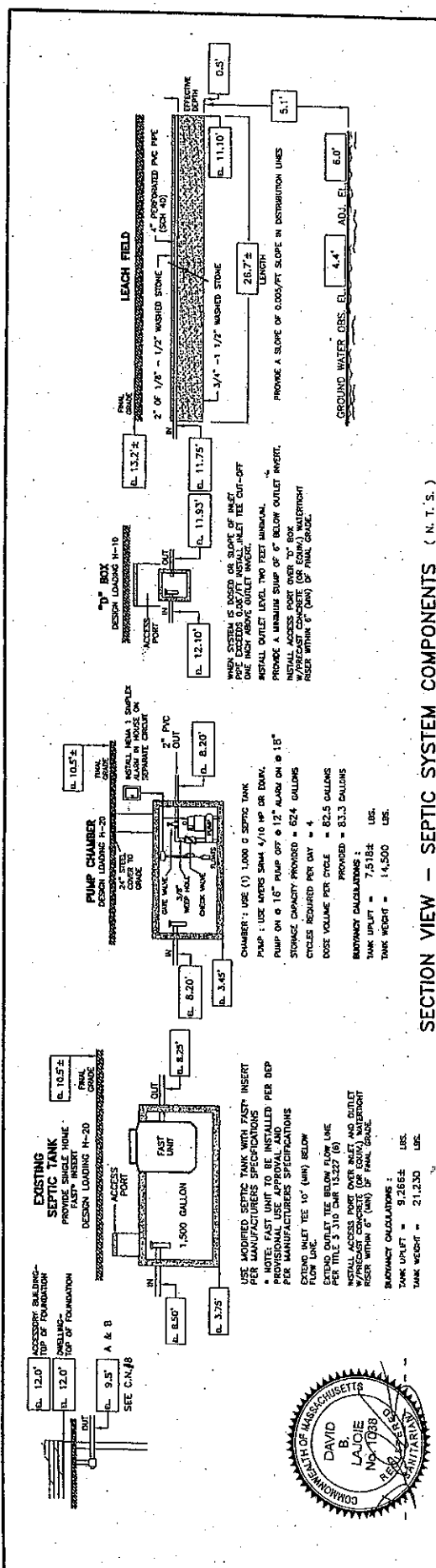
ENGINEERING - LAND SURVEYING

JOB NO : 97052 NAME : NEWMAN

DATE : 7-27-98 SHEET 2 OF 2







SECTION VIEW - SEPTIC SYSTEM COMPONENTS (N.T.S.)

DEEP OBSERVATION HOLE LOG

TEST BY: JASON ELLIS

TEST BY: JASON ELLIS
WITNESS: TRURO BOH

| SUPPLY | LOWEST ELEVATION | HORIZON | TEXTURE | STRUCTURE | MOTTLED | CONGLOMERATE |
|-----------------|---------------------|---------|-------------------------|-----------|---------|--------------|
| 0.0' | | A | LOAMY SAND | NO | NO | LOOSE |
| 1.0' | 7.7' | | PERC @ 1.5" ≤2 MM/IN | | | |
| WATER @ 4.3' | 4.4' | C | MEDIUM SAND | NO | NO | LOOSE |

TEST BY: JASON ELLIS

EST BY: JASON ELLIS
 OFFICE: TRILBON

| DEPTH | SAMPLE LOCATION | HORIZON | TEXTURE | STRUCTURE | MOTTLE | CONSIDENCE |
|-------|-----------------|---------|-------------------------|-----------|--------|------------|
| 0.0' | | A | LOAMY SAND | NO | NO | LOOSE |
| 1.0' | | 8.15" | | | | |
| | | | PERC BATT C<2 MIN/IN | | | |
| | | C | MEDIUM SAND | NO | NO | LOOSE |
| | | 4.4" | | | | |

WATER ●
4.75"

GENERAL NOTES

1. ALL CONTRACTORS AND/OR INSTALLERS ARE RESPONSIBLE FOR PROVIDING AND MAINTAINING A SAFE WORK AREA.
2. CONTRACTORS AND/OR INSTALLERS: VERIFY ALL UTILITY LOCATIONS PRIOR TO CONSTRUCTION.
3. CONTRACTORS AND/OR INSTALLERS: VERIFY ALL WASTE LINE LOCATIONS PRIOR TO CONSTRUCTION.
4. CONSTRUCTION DETAILS TO BE IN ACCORDANCE WITH STATE SANITARY CODE 310 CMR 13.000 AND TOWN BOARD OF HEALTH REQUIREMENTS.
5. ELEVATION DATUM IS FROM ☐ U.S.G.S. QUAD, MAP. ☒ N.G.V.D.
6. MUNICIPAL WATER IS AVAILABLE ☐ YES ☒ NO
7. ANY ALTERNATIONS TO DESIGN MUST BE APPROVED BY FELCO, INC. AND TOWN BOARD OF HEALTH.
8. ALL EXISTING SEWAGE TO BE PUMPED AND FILLED WITH CLEAN MEDIUM SAND.
9. SEPTIC TANKS, DOSING CHAMBERS, GREASE TRAPS, AND DISTRIBUTION BOXES SHALL BE INSTALLED WATERIGHT.
10. WHEN SEPTIC TANK, DOSING CHAMBERS, GREASE TRAPS, AND DISTRIBUTION BOXES ARE PLACED IN FILL, PROVIDE A LEVEL STABLE BASE WHICH HAS BEEN MECHANICALLY COMPACTED. VIRGIN GROUND WITH A 6" CRUSHED STONE BASE IS OTHERWISE ADEQUATE.
11. GROUND COVER OVER SEPTIC SYSTEM COMPONENTS SHALL NOT EXCEED 36".

DESIGN

- FLOW DETERMINATION BEDROOM DWELLING
 GARBAGE GRINDER ☒ NO ☐ YES
 FLOW RATE = GAL/DAY
 SEPTIC TANK SIZES:

$$\frac{330}{3} \times 2.0 = 660 \text{ GAL/DAY}$$
 USE: 1,500 GAL (EXISTING)
 LEACHING FACILITY CALCULATIONS:
 PERCOLATION RATE IS $< \frac{5}{1}$ MIN/INCH CLASS

$$\frac{\text{BOTTOM}}{\text{(S.F.)}} = \frac{478}{1} \times \frac{0.74}{1} = \frac{354}{1} \text{ GAL/DAY}$$
 USE: 36.5' LONG X 28.7' WIDE LEACH FIELD
 AS SHOWN = 478' S.F.
 W/ 0.5' EFFECTIVE DEPTH

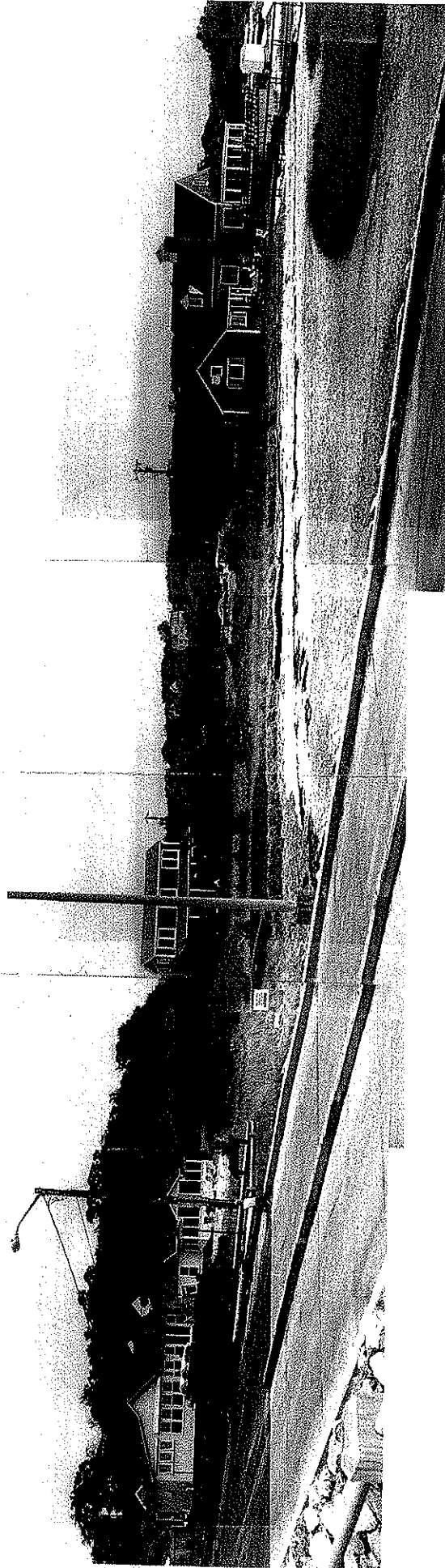
CONSTRUCTION NOTES

1. WORK UNIT TO BE GRADED SLOPE FENCE.
2. EXCAVATE ALL UNSUITABLE SOIL 5' AROUND LEACH AREA DOWN TO MEDIUM SAND AND REPLACE WITH CLEAN MEDIUM SAND.
3. EXCAVATE EXISTING SEWAGE AND UNSUITABLE SOIL AND REPLACE WITH CLEAN MEDIUM SAND.
4. FELLO TO STAKE LEACH AREA FOR INSTALLATION.
5. INSTALL 40 LB. PEPPYAK, FLASHING OR EQUIV., AS FLOW BARriers AROUND POLE LEACH AREA FROM EL. 12.0' DOWN TO EL. 8.0'
6. ALL DISTURBED AREAS TO BE REVEGETATED WITH NATIVE GRASSES UPON WORK COMPLETION.
7. ALL FOUNDATIONS TO BE CONSTRUCTED PER BUILDING CODE REQUIREMENTS FOR CONSTRUCTION IN FLOODPLAIN, SEE ALSO SEPARATE DRAWINGS.
8. ALL WASTE LINES TO BE CHANGED AS NECESSARY TO EXIT AT LOCATION AND ELEVATION SHOWN.
9. INSTALL SEPTIC TANK AND PUMP CHAMBER WATERPROOF AND WATERTIGHT.
10. PROPOSED POOL TO BE ABOVE GROUND TYPE INSTALLED PER MANUFACTURER SPECIFICATIONS AND PER BUILDING CODE REQUIREMENTS.
11. ALL PERMITS AND NECESSARY REQUIREMENTS, SIZE MUST CONFORM TO APPLICABLE REQUIREMENTS.

FELCO, INC.

0077 /
ENGINEERING - / AND SUPERVISING

| | |
|----------------|--------------|
| JOB No : 96378 | NAME : ALLEN |
| DATE : 9-10-96 | SHEET 2 OF 2 |



Page 1

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS
CIVIL ACTION NO. 05-10370PBS

BARBARA CORDI-ALLEN AND JOHN ALLEN,)
Plaintiffs,)

vs.)

JOSEPH R. CONLON, ARTHUR F. HUTLIN,)
NORMAN H. POPE, KEITH S. ALTHAUS,)
And MARINNA MATRICARDI as they are)
Members and collectively the TRURO)
ZONING BOARD OF APPEALS AND THE)
TOWN OF TRURO, MASSACHUSETTS, AND)
BROOKE NEWMAN,)
Defendants.)

DEPOSITION OF JOHN E. ALLEN, a witness
called on behalf of the Defendants pursuant to
the Massachusetts Rules of Civil Procedure
before Jo Anne M. Shields, Professional
Shorthand Reporter and Notary Public in and for
the Commonwealth of Massachusetts, at the offices
of Brody, Hardoon, Perkins & Kesten, LLP, One
Exeter Plaza, Boston, Massachusetts, on Friday,
March 31, 2006, commencing at 1:45 p.m.

DUNN & GOUDREAU COURT REPORTING SERVICE, INC.
One State Street
Boston, Massachusetts 02109
Telephone (617) 742-6900

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| | | |
|----------------|--------|-------|
| Deposition of: | Direct | Cross |
| JOHN E. ALLEN | | |
| By Ms. Barry | 4 | |
| By Ms. Ecker | | 25 |

EXHIBITS

| | |
|---|------|
| No. | Page |
| 12 Re-notice of Deposition | 4 |
| 13 Defendant Brooke Newman's Request for Production of Documents | 9 |

Page 2

1 APPEARANCES:

2 PAUL REVERE, III, ESQUIRE

3 LAW OFFICES OF PAUL REVERE, III
226 River View Lane4 Centerville, Massachusetts 02632
(508) 778-7126

5 for the Plaintiffs

6 DEBORAH I. ECKER, ESQUIRE

7 BRODY, HARDOON, PERKINS & KESTEN, LLP
One Exeter Plaza8 Boston, Massachusetts 02116
(617) 880-71009 for the Defendants, Joseph R. Conlon,
Arthur F. Hutlin, Norman H. Pope, Keith
S. Althaus, and Marinna Matricardi as
10 they are Members and collectively the
11 Truro Zoning Board of Appeals and the
Town of Truro, Massachusetts

12 JULIE PRUITT BARRY, ESQUIRE

13 NUTTER, McLENNEN & FISH, LLP
World Trade Center West14 155 Seaport Boulevard
15 Boston, Massachusetts 02210-2831
(617) 439-2831

16 for the Defendant, Brooke Newman

17 ALSO PRESENT:

18 Barbara Cordi-Allen

Page 4

1 PROCEEDINGS

2 (Re-notice of Deposition marked as Allen
3 Exhibit No. 12.)

4 STIPULATIONS

5 It is stipulated by and between
6 counsel for the respective parties that the
7 deposition transcript is to be read and signed
8 by the deponent under the pains and penalties
9 of perjury; and that the sealing and filing
10 thereof are waived; and that all objections,
11 except as to form, and motions to strike are
12 reserved to the time of trial.

13 ***

14 JOHN E. ALLEN, a witness called for
15 examination by counsel for the Defendants,
16 having been satisfactorily identified by the
17 production of his driver's license and having
18 been duly sworn, testified as follows:

19 ***

20 DIRECT EXAMINATION

21 BY MS. BARRY:

22 Q. Good afternoon, Mr. Allen.

23 A. Hi.

24 Q. My name is Julie Barry. I represent the

Page 5

1 defendant Brooke Newman in this matter. I
2 would like to just ask -- to give you some
3 instructions concerning your deposition today
4 that might help you get through it. I would
5 ask that you listen to the question, answer the
6 question. If you will wait till I'm done
7 asking before you speak, that will help the
8 stenographer. She's taking down both the
9 question and the answer.

10 If you would -- if you need to take a break
11 for any reason or need to speak to your
12 attorney, feel free to ask. I would ask that
13 if there's a question pending that you answer
14 the pending question before we take a break.
15 And if you have any difficulty understanding
16 the question, please let me know. If I ask a
17 question and you answer it, I'll assume that
18 you understand it.

19 MS. BARRY: I assume we'll use the same
20 stipulations as --

21 MR. REVERE: The same stipulations and
22 just -- I haven't gotten a copy of it. But
23 they -- we're going to try to get it signed
24 by --

Page 7

1 Service?

2 A. Twenty-two years.

3 Q. Okay. And did you graduate high school,
4 Mr. Allen?

5 A. Yes.

6 Q. And where was that?

7 A. Chicopee High.

8 Q. Okay. And did you go on to any education after
9 high school?

10 A. Yes.

11 Q. And where was that?

12 A. I got my bachelor's degree from Western New
13 England College.

14 Q. Western New England?

15 A. Uh-huh.

16 MS. ECKER: You're going to have to speak
17 up.

18 Q. And what was your bachelor's in?

19 A. Business administration.

20 Q. And what is your position at the Postal
21 Service?

22 A. Mail processor, clerk.

23 Q. And what office do you work at?

24 A. Pardon?

Page 6

1 MS. ECKER: Well, we have to wait for the
2 second copy as well.

3 MR. REVERE: Okay.

4 MS. ECKER: So after you get that, if you
5 could get it signed by the 14th. And,
6 actually, off the record.

7 (A brief discussion was held off the
8 record.)

9 MS. BARRY: Okay. So then we'll stipulate
10 that, the deposition transcript, you will read.
11 You'll have an opportunity to read and make
12 changes if necessary and sign by April 14th.

13 MR. REVERE: Okay.

14 MS. BARRY: I've marked as Exhibit 1, just
15 for recordkeeping purposes -- sorry -- Allen
16 Exhibit 12 -- your re-notice of deposition.

17 Q. Can you state your name and address for the
18 record, Mr. Allen?

19 A. It's John Allen, 143 Ardsley Road, Longmeadow.

20 Q. And are you employed, Mr. Allen?

21 A. Yes.

22 Q. And where are you employed?

23 A. U.S. Postal Service.

24 Q. And how long have you been with the U.S. Postal

Page 8

1 Q. What office or where is your --

2 A. It's --

3 Q. -- work located? Where is it --

4 A. Oh, it's --

5 Q. -- the location where you work?

6 A. Let's see. It's in Springfield, Mass. It's on
7 Fiberloid Street.

8 Q. Okay. Did you do anything to prepare for
9 today's deposition other than meet with your
10 attorney?

11 A. No, not really.

12 Q. Did you read any documents or look at anything?

13 A. No.

14 Q. Okay. Other than your attorney, did you speak
15 with anyone about your deposition today?

16 A. No. Just -- no, not really.

17 Q. Okay. Have you been deposed before, Mr. Allen?

18 A. Yes.

19 Q. And do you remember how many times?

20 A. Just once before.

21 Q. Okay. And what was that in connection with?

22 A. That was in connection with a lawsuit against
23 an elevator company.

24 Q. Was that the personal injury lawsuit concerning

| Page 9 | Page 11 |
|--|--|
| <p>1 your wife's injuries?</p> <p>2 A. Yes.</p> <p>3 Q. Okay. Do you have an engineering license, a</p> <p>4 surveying license, or an appraiser's license,</p> <p>5 Mr. Allen?</p> <p>6 A. Do I?</p> <p>7 Q. Uh-huh.</p> <p>8 A. No.</p> <p>9 Q. Now, you filed a Su- -- a Complaint in Superior</p> <p>10 Court which has since been moved to Federal</p> <p>11 District Court, appealing, among other things,</p> <p>12 the decision of the Zoning Board of Appeals'</p> <p>13 decision to uphold the decision of the</p> <p>14 building commissioner to uphold the issuance of</p> <p>15 a building permit to pro- -- for property owned</p> <p>16 by the defendant Brooke Newman at 3 Yacht Club</p> <p>17 Road. Is that correct? Do you understand</p> <p>18 that?</p> <p>19 A. Yes.</p> <p>20 Q. Okay. Did you do anything to assist your --</p> <p>21 strike that.</p> <p>22 MS. BARRY: Okay. Mark this as the next</p> <p>23 exhibit.</p> <p>24 (Defendant Brooke Newman's Request for</p> | <p>1 Ms. Cordi-Allen?</p> <p>2 A. I don't -- I don't have any. No.</p> <p>3 Q. Do you use e-mail, Mr. Allen?</p> <p>4 A. I don't.</p> <p>5 Q. Okay. So you don't use e-mail at your home or</p> <p>6 office?</p> <p>7 A. No.</p> <p>8 Q. Okay. I'm going to show you another exhibit,</p> <p>9 Mr. Allen -- this is marked Cordi-Allen</p> <p>10 Exhibit 4 -- and ask if you would look at that</p> <p>11 and tell me if you recognize it.</p> <p>12 (Pause.)</p> <p>13 A. I vaguely, you know, might have seen it before.</p> <p>14 Q. Okay. Do you recall if you wrote that</p> <p>15 document, Mr. Allen?</p> <p>16 A. I might have done this with my wife.</p> <p>17 Q. Okay. Do you -- can you explain to me what was</p> <p>18 the basis of your complaint -- strike that.</p> <p>19 This letter dated September 20th, 1998 that is</p> <p>20 Exhibit -- Cordi-Allen Exhibit 4 is a letter to</p> <p>21 the building in- -- inspector of the Town of</p> <p>22 Truro in which you have requested that a</p> <p>23 building permit not be issued to Ms. Newman for</p> <p>24 certain modifications to her property at 3</p> |
| Page 10 | Page 12 |
| <p>1 Production of Documents marked as Allen</p> <p>2 Exhibit No. 13.)</p> <p>3 (A brief discussion was held off the</p> <p>4 record.)</p> <p>5 Q. I'm handing you what's been marked as Exhibit</p> <p>6 13 and ask you if you would just look at that</p> <p>7 and tell me if you've seen it before.</p> <p>8 A. I don't recall this.</p> <p>9 Q. You don't recall seeing that?</p> <p>10 A. No.</p> <p>11 Q. Okay. Just let me ask you a couple of</p> <p>12 questions concerning that document. What it</p> <p>13 is, it's defendant Brooke Newman's first</p> <p>14 request for production of documents. Did you</p> <p>15 do anything to assist your attorney or -- or</p> <p>16 Ms. Cordi-Allen in pulling together any</p> <p>17 documents that might have been responsive to</p> <p>18 those requests?</p> <p>19 A. Any documents? No.</p> <p>20 Q. Okay. Did you -- would you have any documents</p> <p>21 in your possession, custody, or control</p> <p>22 concerning this lawsuit or Ms. Newman's</p> <p>23 property that you would not have already turned</p> <p>24 over to your attorney or -- or to</p> | <p>1 Yacht Club Road. Is that correct?</p> <p>2 A. Yes.</p> <p>3 Q. Do you, as you sit here today, recall or have</p> <p>4 an understanding of the basis of your complaint</p> <p>5 to the building inspector concerning the</p> <p>6 building permit being sought by Ms. Newman?</p> <p>7 A. We just wanted to make sure that -- that the</p> <p>8 right procedures were taking place.</p> <p>9 Q. And when you say "the right procedures," are</p> <p>10 you talking about the Town's procedures in</p> <p>11 issuing building permits?</p> <p>12 A. Yes.</p> <p>13 Q. Do you recall whether you received a response</p> <p>14 from the building inspector to your letter?</p> <p>15 A. I don't remember.</p> <p>16 Q. I'm sorry. You don't recall?</p> <p>17 A. I don't recall.</p> <p>18 Q. I can represent to you, Mr. Allen, that you did</p> <p>19 not appeal or take any further action at that</p> <p>20 time concerning the building inspector's</p> <p>21 issuance of a building permit to Ms. Newman for</p> <p>22 the proposed modifications to 3 Yacht Club</p> <p>23 Road. Why is that?</p> <p>24 (Pause.)</p> |

Page 13

1 A. I'm not really sure.
 2 Q. You're not sure why you took no further action
 3 at the time?
 4 A. Right.
 5 Q. Do you recall whether you were represented by
 6 counsel at the time?
 7 A. I believe we weren't.
 8 Q. At the time you wrote this letter in 1998,
 9 Mr. Allen, did you have concerns that the
 10 proposed modifications to Ms. Newman's
 11 structure at 3 Yacht Club Road would somehow
 12 impact your property?
 13 A. I think we were just, basically, concerned
 14 that -- that procedures were put in place that
 15 were fair to all, that if any construction was
 16 done that the law -- you know, that it was --
 17 it would follow the legal means.
 18 Q. Did you have a concern at the time, Mr. Allen,
 19 that the proposed modifications would harm your
 20 property or the structure located on your
 21 property?
 22 A. Not that it would harm our property.
 23 Q. Now, let me draw your attention to the
 24 Complaint at issue, this laws- -- this

Page 14

1 particular lawsuit. And part of this lawsuit,
 2 you understand, concerns your appeal of the
 3 Zoning Board of Appeals' decision upholding the
 4 issuance of -- of that building permit back in
 5 1998. Correct?
 6 A. (Witness indicates).
 7 Q. You have to answer --
 8 A. Oh.
 9 Q. -- verbally.
 10 A. Yes.
 11 Q. Okay. What are your objections to the building
 12 permit that was granted to Ms. Newman in 1998
 13 for the modifications to the structure at 3
 14 Yacht Club Drive (sic)?
 15 A. What are our objections?
 16 Q. What are your objections? I've already asked
 17 Ms. Cordi-Allen. And I'd like to know, what
 18 are your objections?
 19 (Pause.)
 20 A. Well, I would say, for one thing, the -- she
 21 was able to get a full basement.
 22 Q. Okay. Do you have an understanding of
 23 wheth- --
 24 MR. REVERE: Can we go off the record for a

Page 15

1 second here? Yeah.
 2 (A brief discussion was held off the
 3 record.)
 4 Q. Okay. So you had an objection that she was
 5 able to get a full basement?
 6 A. Or concrete foundation.
 7 Q. Okay. As opposed to pilings? Is that -- is
 8 that my --
 9 A. Right.
 10 Q. -- understanding? What other objections do you
 11 have?
 12 A. Well, I don't think she has a permit for a
 13 well.
 14 Q. And what do you base that on? Why -- why do
 15 you think that she doesn't have a permit for
 16 her well?
 17 A. We've researched it.
 18 Q. And what research have you done?
 19 A. Resear- -- researched with the Town.
 20 Q. Researched town records?
 21 A. Right.
 22 Q. Okay. Anything else?
 23 A. The -- the plantings that were brought in and
 24 the amount of fill.

Page 16

1 Q. And what was your objection to the plantings
 2 that were brought in and the amount of fill?
 3 A. I don't think she received any kind of okay to
 4 do that.
 5 Q. And by "okay," you mean permits?
 6 A. Right.
 7 Q. Okay. Anything else?
 8 A. That's all I can recall.
 9 Q. Now, you testified earlier that it wasn't your
 10 concern or you weren't concerned when you wrote
 11 the letter to the building inspector in 1998
 12 that -- that the modifications to Ms. Newman's
 13 property would harm your property or the
 14 structure located on the pro- -- on your
 15 property.
 16 Moving forward to today, do you have any
 17 concerns that the modifications made to
 18 Ms. Newman's structure on her property have
 19 somehow harmed your property or your structure
 20 on your property?
 21 A. No. I don't think they've harmed the property.
 22 Q. They have not harmed your property?
 23 A. Right.
 24 Q. Can you tell me why you waited six years to

Page 17

1 bring an enforcement action with the building
 2 inspector asking to have Ms. Newman's building
 3 permit revoked?
 4 (Pause.)
 5 A. I would say that we've been through so much,
 6 that things come up and it's ongoing. There's
 7 always something.
 8 Q. Let me see if I can understand what you're
 9 saying. When you say you've been through so
 10 much, are you talking about your experiences in
 11 seeking permits for your property?
 12 A. (Witness indicates).
 13 Q. You have to --
 14 A. Yes.
 15 Q. -- answer.
 16 A. Yes.
 17 Q. What else do you mean by the "been through so
 18 much, that things come up and it's ongoing"?
 19 A. Well, if we're -- if we're going to be held to
 20 a certain -- where we have to abide by certain
 21 regulations, we just think that it should be
 22 the same for everyone. So -- so it's an
 23 ongoing...
 24 Q. Did you believe, back in 1998 when you wrote or

Page 18

1 corresponded with the building inspector
 2 concerning Ms. Newman's building permit, that
 3 you were, at that time, being treated
 4 differently in connection with permitting for
 5 your own property?
 6 A. I think we've been treated differently right
 7 from -- right from the start.
 8 Q. And when you say "right from the start," can
 9 you just tell me, are you talking about since
 10 1996 when you purchased the property?
 11 A. Right. Right. I mean, the first thing we
 12 found out about was that they were going to
 13 charge us \$2,100 for our floats, whereas they
 14 were going to charge the yacht club like \$300.
 15 So right from that -- right from that time on,
 16 it seemed like ev- -- everything that we
 17 attempted to do was being objected to.
 18 Q. Do you have any other objections to the Board
 19 of Appeals' decision upholding the building
 20 permit granted to Ms. Newman for the
 21 modifications to the structure at 3 Yacht Club
 22 Road?
 23 A. Do I have any objections?
 24 Q. Any other objections other than what you've

Page 19

1 already told me today.
 2 A. I don't know if the fence is on her property.
 3 It just seems to go along the road.
 4 Q. Anything else?
 5 A. I guess that's it.
 6 Q. I'm going to show you Ex- -- what is Exhibit --
 7 Cordi-Allen Exhibit 7 and ask you to just
 8 quickly look at it, please. You don't have to
 9 read it. But if you would turn to the last
 10 page and let me know if that's your signature
 11 there.
 12 A. Yes. Yes.
 13 Q. Okay. And do you recall seeing that document
 14 and si- -- previously and signing it then?
 15 A. Possibly. Yes.
 16 Q. Okay. That is your signature though?
 17 A. Yeah.
 18 Q. Okay. And we're going to have you sign it now
 19 so that we have an original. Because it
 20 appears as though the signature that's attached
 21 to the exhibit now is -- is a facsimile copy,
 22 and we'd like to have --
 23 A. Okay.
 24 Q. -- the original.

Page 20

1 A. Sign it here?
 2 MS. ECKER: On the --
 3 THE WITNESS: What's that?
 4 MS. ECKER: -- page before is the
 5 signature, a place for your signature.
 6 MS. BARRY: This is off the record, please.
 7 (A brief discussion was held off the
 8 record.)
 9 Q. Now, in -- I'm not going to have you read this
 10 to save time, Mr. -- Mr. Allen. But I -- I can
 11 represent to you that, in the response to
 12 Question No. 5 of those interrogatories, you
 13 allege that Ms. Newman is of the Jewish faith;
 14 and this is in connection with the claims that
 15 you have received disparate treatment. What's
 16 the basis for your understanding or belief that
 17 Ms. Newman is of the Jewish faith?
 18 A. I don't really know if she is of the Jewish
 19 faith.
 20 Q. Do you know or recall if you have had an
 21 appraisal, a real estate appraisal, done of
 22 your property since the time that you've bought
 23 it and now?
 24 MS. BARRY: Sorry. I need to stop.

5 (Pages 17 to 20)

Page 21

1 (Off the record due to incoming cell phone
2 call.)
3 MS. BARRY: Back on. Yeah. Can you read
4 it back.
5 (Question read back.)
6 Q. And let --
7 A. Yes.
8 MS. BARRY: Thank you.
9 Q. And let me clarify. When I say "property," I
10 mean your Truro property at 5 Yacht Club Road.
11 A. Yes. I believe we have.
12 Q. Do you recall when that was done?
13 A. Let's see. Sometime in 200- -- sometime in
14 2005.
15 Q. 2005. Do you recall who did -- who did the
16 appraisal?
17 A. No. I don't. I don't remember.
18 Q. And do you recall what the outcome of the
19 appraisal was?
20 A. No.
21 MS. BARRY: That's not me.
22 MR. REVERE: Yes. Off the record.
23 (Off the record due to incoming cell phone
24 call.)

Page 22

1 A. I -- I don't recall what it was. No, not
2 exactly.
3 (A brief discussion was held off the
4 record.)
5 MS. BARRY: You know what? I just want to
6 clarify -- on the record, please. I want to
7 clarify something with you, Paul. Because,
8 last week, you had indicated -- or on the 17th
9 when we had Ms. Cordi-Allen's deposition --
10 that there was not going to be an appraisal
11 done in this case or there wasn't an appraisal
12 done. Now, the appraisal that Mr. Allen has
13 referred to today, I know it's not listed in
14 your disclosure.
15 MR. REVERE: I --
16 MS. BARRY: Are you intending --
17 MR. REVERE: I was not even aware --
18 MS. BARRY: -- on using that?
19 MR. REVERE: -- of any appraisal until a
20 minute ago --
21 MS. BARRY: Okay. All right.
22 MR. REVERE: -- okay, from my standpoint.
23 MS. BARRY: All right. So you're not
24 intending on using this as evidence in this

Page 23

1 case?
2 MR. REVERE: We're still off the record.
3 Right?
4 MS. BARRY: No. We're on the record.
5 MS. ECKER: No. We're on the record.
6 MR. REVERE: We're on the record. Okay.
7 Let's go off the record for a second just
8 relevant to that.
9 (A brief discussion was held off the
10 record.)
11 MS. BARRY: So I -- I -- I understand then,
12 after a dis- -- off-the-record discussion, that
13 the appraisal that was performed was not in
14 connection with or related to this litigation
15 and may have been requested for other
16 litigation ongoing in Barnstable Superior Court
17 or may have been used for purposes of
18 refinancing.
19 But, otherwise, it's my understanding,
20 based on testimony today and the dis- -- and
21 Ms. Cordi-Allen's previous testimony as well as
22 your Rule 26 disclosure, that you are not
23 relying on an expert appraisal or an expert
24 appraiser as a -- as an expert witness in this

Page 24

1 case.
2 MR. REVERE: That is correct.
3 MS. BARRY: Okay.
4 MR. REVERE: I have not retained one at
5 this time, reserving all appropriate rights if
6 I was to do so in the future.
7 Q. Okay. And I believe that you just testified,
8 Mr. Allen, that you didn't recall what the
9 outcome of that appraisal was; is that correct?
10 A. That's correct.
11 Q. Okay. Do you still have a copy of that
12 appraisal in your possession?
13 A. I don't know.
14 Q. Do you recall yourself what the purpose of the
15 appraisal was -- was for?
16 A. Possibly, for a refinance.
17 Q. Okay. Now, just to finish up then, have you
18 told me all of your objections to the Board of
19 Appeals' decision upholding the building permit
20 of Ms. Newman's?
21 A. Uh-huh.
22 Q. Is that yes?
23 A. I -- would you repeat that?
24 Q. Have you told me all of your objections to the

Page 25

1 Board of Ap -- Appeals' decision upholding the
 2 building permit issued to Ms. Newman for the
 3 modifications to the property at 3 Yacht Club
 4 Road?
 5 A. I believe so.
 6 MS. BARRY: Okay. Then, pending receipt of
 7 the items we discussed earlier and other
 8 discovery that we discussed at Ms. Cordi-Allen's
 9 deposition --
 10 MR. REVERE: Right.
 11 MS. BARRY: I am going to suspend.
 12 CROSS-EXAMINATION
 13 BY MS. ECKER:
 14 Q. Good afternoon.
 15 MS. ECKER: Are you going to leave?
 16 MS. BARRY: I'm going to leave.
 17 (A brief discussion was held off the
 18 record.)
 19 (Brief recess taken.)
 20 BY MS. ECKER:
 21 Q. Good afternoon, Mr. Allen. My name's Deborah
 22 Ecker, as you know. You were here this morning
 23 at your wife's deposition. Correct?
 24 A. Yes.

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1 Q. Okay. You have filed a Complaint against the
 2 Town of Truro and the members of the Zoning
 3 Board of Appeals, alleging that they have
 4 discriminated against you and your wife because
 5 your wife is Lebanese. Correct?
 6 A. Yes.
 7 Q. Do you have any evidence of any of the Zoning
 8 Board members that you have named as defendants
 9 in this case have said anything or written
 10 anything concerning your wife's being Lebanese?
 11 A. Do I have any evidence?
 12 Q. Yes.
 13 A. No.
 14 Q. And you are not Lebanese yourself. Correct?
 15 A. Right.
 16 Q. Why do you believe that the decisions that have
 17 been made by the Town and the Zoning Board of
 18 Appeals are based on the fact that your wife is
 19 Lebanese?
 20 A. I think that we feel as though we're being
 21 treated differently as far as -- as far as when
 22 we go for permits and as far as whatever is
 23 done in the Pamet. We seem to be held to a
 24 different --

Page 27

1 Q. I'm sorry. Are you done your answer? Yeah.
 2 Just --
 3 A. A different interpretation of the law, I guess.
 4 Q. Okay. And why do you believe that's because
 5 your wife is Lebanese?
 6 A. I'm not really sure if that's the case or not.
 7 Q. Are you aware of whether any of the Zoning
 8 Board of Appeals members that are listed as
 9 defendants in this case -- and they appear in
 10 the caption of -- of Exhibit 7 -- are you aware
 11 if any of them are Jewish?
 12 A. I wouldn't know.
 13 Q. And taking a look at what is marked as
 14 Exhibit 7, the answers to interrogatories, did
 15 you assist in the preparation of those answers?
 16 Or were those answered by your wife?
 17 A. It's been a while since I've seen these.
 18 Q. What is the basis for the statement or the
 19 answer that's contained in Answer 5 that you
 20 believe the ma- -- majority of the board
 21 members in the town of Truro are Jewish?
 22 A. What was the question again?
 23 Q. What's the basis for your statement in Answer
 24 No. 5 that the majority of the board members in

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1 the town of Truro -- the Conservation
 2 Commission, the Zoning Board of Appeals, the
 3 Harbor Commission; and I believe the Board of
 4 Selectmen are listed -- what's your basis for
 5 saying that the majority of the members are
 6 Jewish?
 7 A. I think that just -- I'm not really sure that
 8 they -- that they are Jewish.
 9 Q. Do you have any evidence that any of the
 10 members of the Board of Selectmen, over the
 11 years, the Conservation Commission, Harbor
 12 Commission, and the Zon- -- I think I asked you
 13 already about the Zoning Board of Appeals and
 14 the Board of Health -- that any of them took
 15 into account your wife's national origin when
 16 they made decisions concerning your property?
 17 A. It's something we don't really know for sure.
 18 Q. Do you have any evidence or any circumstantial
 19 evidence of any type that any of those board
 20 members in the Town of Truro took into account
 21 your wife's ethnicity or national origin in --
 22 when they made their decisions concerning the
 23 applications for construction on your property?
 24 A. Only that they seem to have acted

7 (Pages 25 to 28)

Page 29

1 inconsistently with -- with -- with other
 2 projects --
 3 Q. Do you know if ever --
 4 A. -- in Truro.
 5 Q. Sorry. Do you know if any Lebanese homeowners
 6 in Truro have been allowed to make renovations
 7 to their property or to construct on their
 8 property?
 9 A. Do we know of any other Lebanese --
 10 Q. Yes.
 11 A. -- people? I don't recall any other -- any
 12 other Lebanese -- other Lebanese people that we
 13 know of in Truro.
 14 Q. Which properties in the town of Truro do you
 15 believe your property is similarly situated to
 16 who have been allowed to perform construction
 17 work on their property?
 18 A. The Sexton property.
 19 Q. And are the Sextons Jewish?
 20 A. Pardon?
 21 Q. Are the Sextons Jewi- -- Jewish?
 22 A. Oh, I don't know.
 23 Q. Any other property?
 24 A. The Perrys.

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1 Q. Do you know, are the Perrys Jewish?
 2 A. I don't know.
 3 Q. You don't know?
 4 A. I don't know.
 5 Q. Do you know if the Perrys' structure on their
 6 property is as close to the water as your
 7 property?
 8 A. Is it as close?
 9 Q. Yes.
 10 A. Probably not.
 11 Q. And what about the Sextons' property, do you
 12 know if the structure on their property is as
 13 close to the water as your structure?
 14 A. I would say -- I would say, close.
 15 Q. And is the Sextons' property located on the
 16 Pamet Harbor?
 17 A. No. It's not on the Pamet Harbor.
 18 Q. Is there any property on the Pamet Harbor that
 19 you believe is similarly situated to yours that
 20 have been allowed to construct on the property?
 21 A. Well, Brooke Newman and Sandra (sic) Landis.
 22 Q. And would you agree with me that Ms. Newman's
 23 structure on her property is a hundred' -foot
 24 setback from the water line?

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1 A. It's probably over a hundred foot.
 2 Q. And would you agree with me that Ms. Landis'
 3 structure on her property is a hundred-feet or
 4 more setback from the water line?
 5 A. It could be. Yeah.
 6 Q. And the proposal and now the construction on
 7 Ms. Newman's property, would you agree with me
 8 that's smaller than the proposal that you and
 9 your wife have for the construction on your
 10 property?
 11 A. Yes.
 12 Q. The same with Ms. Landis, would you agree that
 13 Ms. Landis' proposal for a construction on the
 14 property is smaller than what you and your wife
 15 propose to build on your property?
 16 A. Yes. Probably, it is.
 17 Q. Were you present when your wife was speaking
 18 with Mr. Brown about the purchase of the
 19 property?
 20 A. Probably. Yeah.
 21 Q. Did you ask Mr. Brown at all regarding any
 22 restrictions for the con- -- renovation of
 23 structures on the property prior to your
 24 purchase of it?

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1 A. I don't recall specifically what was said.
 2 Q. Do you recall anything Mr. Brown said about the
 3 potential for development on the property prior
 4 to your purchase of that property?
 5 A. I remember talking about the dock and how the
 6 floats were there and how we would be able to
 7 add the floats onto the pier. As far as the
 8 house goes, I understood we could put in a
 9 three-bedroom septic.
 10 Q. And who told you prior to your purchase of the
 11 house that you would be able to put in a
 12 three-bedroom septic?
 13 A. I think it was talked about. But I -- as far
 14 as somebody telling us specifically, I don't
 15 recall specifically.
 16 Q. Did anybody from the Town or a member of the
 17 town boards tell you that you would be able to
 18 put in a three-bedroom septic system prior to
 19 your purchase of the house?
 20 A. Prior to the purchase of the house?
 21 Q. Yes.
 22 A. I don't recall.
 23 Q. Prior to your purchase of the property, did you
 24 do any research to determine whether you would

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1 be able to install a septic system with the
2 capacity for three bedrooms?
3 A. Prior to the purchase, no.
4 Q. Prior to the purchase of the property, did you
5 do any research or anything to determine
6 whether you would be able to expand the size of
7 the structure on your property?
8 A. Did we do any research prior to the purchase?
9 No.
10 Q. Did anyone --
11 A. We --
12 Q. I'm sorry.
13 A. We assumed that it was because of the size of
14 the foot- -- of -- of the land that was
15 involved; we assumed that we'd be able to
16 build.
17 Q. Did anyone tell you that you would be able to
18 build, that the -- that the -- the lot was
19 buildable prior to your purchase of the house?
20 A. Did they -- I don't remember anybody saying
21 that it wasn't buildable.
22 Q. But no one told you that it was buildable?
23 A. Specifically, I mean, we were dealing with --
24 what's his name?

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1 Q. Nick Brown?
2 A. Nick Brown. I just remember that we felt as
3 though we -- we would be able to, with our
4 con- -- with our conversations with Nick Brown,
5 that it would be something we would be able to
6 add on to the house.
7 Q. And what specifically did Mr. Brown say to you
8 that made you believe that you'd be able to add
9 on to the house prior to your purchase of the
10 house?
11 A. What did he say to us --
12 Q. Yes.
13 A. -- specifically? I don't recall specifically.
14 I just remember it being talked about as far as
15 adding on.
16 Q. Okay. What did -- what's your recollection of
17 how big Mr. Brown told you you could expand a
18 structure on the house prior to your purchase
19 of it?
20 A. The understanding that I came away with was
21 that we could have a three-bedroom septic.
22 And, from there, I assumed that we'd be able to
23 build a three-bedroom house.
24 Q. And that was based on your conversation with

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1 Nick Brown, who was the realtor for the
2 property. Correct?
3 A. I think so. I -- we might have spoken with
4 other people, but I don't -- I mean, he was
5 the -- I believe he was the listing -- I don't
6 know if he was the listing agent or not.
7 Q. When you learned that the Town was going to
8 object to your installing a three-bedroom
9 septic and building a three-bedroom home on the
10 property, did you go to Nick Brown and -- and
11 question why he had made that representation to
12 you at the time of the sale?
13 (Pause.)
14 MR. REVERE: Would you like the question
15 repeated?
16 THE WITNESS: Sure.
17 Q. After you found out that the Town was going
18 to -- that's all right -- going to object to
19 your installing a three-bedroom septic system
20 with the capacity for three bedrooms and
21 constructing an addition to your home for three
22 bedrooms, did you go to Mr. Brown and question
23 why he had made the representations to you at
24 the time of the sale that you would be able to

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1 do that?
2 A. I think there was the question -- I don't know
3 if Nick Brown brought it up or -- I think,
4 right from the start, we liked the house. So
5 as far as -- as far as putting an addition on
6 at that time, it wasn't a priority for us. The
7 priority was, we wanted to buy the house 'cause
8 we liked the location; we liked everything
9 about it. So ...
10 MR. REVERE: The question --
11 Q. Did you ever --
12 MR. REVERE: -- involved --
13 Q. -- discuss --
14 MR. REVERE: -- Nick Brown.
15 Q. Let me -- let me --
16 MR. REVERE: Yeah --
17 Q. Did you ever dis- --
18 MR. REVERE: -- please.
19 Q. Did you ever discuss, after the pur- -- after
20 you purchased the house, did you ever have a
21 discussion with Nick Brown about the Town's
22 refusal to give you permits to construct a
23 three-bedroom home on the site?
24 A. We must have. But I don't -- I don't remember

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1 talking with him.
 2 Q. Did you ever threaten to sue Nick Brown? Or
 3 have you sued Nick Brown?
 4 A. No. As far as I know, we haven't.
 5 Q. Okay. The letters that have been written to
 6 the Town and the various town boards since '96
 7 to the present, most of them contain a typed
 8 signature line of you and your wife. Are those
 9 letters mostly written by your wife? Or do you
 10 participate in the drafting of the letters?
 11 A. I've participated in drafting some of them, not
 12 all of them. But I help her out.
 13 Q. Do you allege that anyone on the Board of
 14 Selectmen has discriminated against you and
 15 your wife?
 16 A. Do we allege that?
 17 Q. Are you alleging that? Let me put it another
 18 way. Do you believe that any member of the
 19 Board of Selectmen for the Town of Truro has
 20 discriminated against you and your wife in any
 21 actions that they have taken?
 22 A. Well, we feel -- we feel as though anything
 23 that we attempt to do -- permitting, any kind
 24 of legal issues -- that we've run up against a

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1 brick wall.
 2 Q. I understand you and your wife keep -- you're
 3 speaking in generalities. I need to know
 4 specifically if you believe that any members,
 5 either past or present, on the Board of
 6 Selectmen for the Town of Truro have
 7 specifically discriminated against you in any
 8 decisions that they've made concerning your
 9 property.
 10 A. Well, we feel we have been.
 11 Q. And I'm trying to find the basis for your
 12 belief. Other than denial of permits for the
 13 construction of your property, do you have any
 14 evidence that any of the members of the Board
 15 of Selectmen hold any malice towards you or
 16 your wife or ill will?
 17 A. It's something I really -- I really don't know
 18 for sure.
 19 Q. Have you ever heard any of the members of the
 20 Board of Selectmen say anything bad about you
 21 or your wife?
 22 A. Well, there was the one time -- I don't know if
 23 it was something bad; but they -- they were
 24 talking about us as -- saying that we -- look

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1 at what the Allens fell into, or look at what
 2 the Allens have or something like that.
 3 Q. Okay. And who said that?
 4 A. I think it was -- specifically, I don't know.
 5 It was, I think, a group of people from maybe
 6 the -- I'm not really sure.
 7 Q. What about the Conservation Commission, do you
 8 know of any specific member or do you believe
 9 any specific member holds any malice or ill
 10 will towards you in rendering their decisions
 11 concerning applications for your property?
 12 A. I can't really say for sure.
 13 Q. The same question for Board of Health. Do you
 14 know if any members of the Board of Health have
 15 any -- hold any malice or ill will towards you?
 16 Or do you believe that they do when they've
 17 made their decisions concerning applications
 18 for your property?
 19 A. I think that all -- it seems that all the
 20 decisions end up going against us.
 21 Q. And is it your testimony that the decisions
 22 that have gone against you have been because
 23 the members of the boards or the town employees
 24 don't like you or, rather, that they have a

Page 40

1 different belief as to what's permissible in
 2 your property?
 3 A. I can't really say for sure.
 4 Q. Do you have any evidence that any of the town
 5 employees or members of any of the town boards
 6 have based their decision on anything other
 7 than their belief that there was a one-bedroom
 8 restriction placed on your property prior to
 9 your purchase of it?
 10 A. Can you state that again?
 11 Q. Sure. Do you have any evidence that any town
 12 employee or member of the town boards for the
 13 Town of Truro have made decisions concerning
 14 your property based on the fact that they don't
 15 like you?
 16 A. Do I have any evidence?
 17 Q. Yes.
 18 A. No.
 19 Q. Rather, do you have any evidence that any of
 20 the town employees or the members of the boards
 21 of the Town of Truro have based their decisions
 22 concerning your property on anything other than
 23 the fact that they have a different view as to
 24 what's permissible for the use of your

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1 property?

2 A. Well, when it comes to other -- when it comes

3 to others doing what they want down there,

4 they -- they seem to be able to do what they

5 want down there except for when it -- for when

6 it comes to John and Barbara.

7 Q. Okay. And those others you're referring to are

8 Ms. Newman and Ms. Landis?

9 A. Yeah. And, also, the Sexton property and the

10 Perrys.

11 Q. Is the Perry property located on Pamet Harbor?

12 A. Is it --

13 Q. Located on --

14 A. It's located on Corn Hill, which is just

15 outside of Pamet Harbor.

16 Q. What about the Sexton property, what area of

17 town is that located in?

18 A. That's -- that's just a little bit south of --

19 of Pamet Harbor on a dune.

20 Q. Do you know if the Sexton property's in a flood

21 plain at all?

22 A. I would assume it is.

23 Q. What about the Perrys' property?

24 A. Also.

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1 Q. And when the Sextons purchased their property,

2 do you know if there was a one-bedroom

3 restriction placed on it?

4 A. I don't know.

5 Q. And what about the Perrys?

6 A. I don't know.

7 Q. Do you know any property -- other property

8 owner in the town of Truro who's had a

9 one-bedroom restriction placed on their

10 property who have been allowed to construct a

11 home larger than one bedroom?

12 A. I don't know.

13 Q. Prior to purchasing the property, did you hire

14 anyone, you or your wife, to look into whether

15 your property contained wetlands or a

16 riverfront area that would hinder your ability

17 to build on the property?

18 A. Before getting -- buying the property? We

19 had -- we were familiar with the property

20 because we spent time in the Pamet. So when we

21 saw that it was for sale, that was the -- the

22 main thing was just -- the important thing was

23 that we buy the property. And we weren't

24 concerned with any kind of . . .

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1 Q. So you didn't hire -- hire anyone to evaluate

2 the property for you to determine --

3 A. Right.

4 Q. -- whether it was buildable or not?

5 A. We kind of knew it was a valuable property --

6 Q. How did you know?

7 A. -- what we liked.

8 Q. Okay. Other than it being what you liked, how

9 did you know it had value?

10 A. It was right on the water, and it had a dock.

11 Q. And as you sat here today, that -- what -- the

12 piece of it that you called a pier versus the

13 dock is still in existence. Correct?

14 A. The pier is there. Yeah.

15 Q. And that pier was in existence when you

16 purchased the property. Correct?

17 A. Right.

18 Q. And there's been no extension to that pier.

19 Correct?

20 A. Right.

21 Q. Did anyone, prior to your purchase of the

22 property, tell you you'd be allowed to extend

23 the pier to become a dock?

24 A. I believe, Nick Brown.

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1 Q. Did he show you any documentation that you'd be

2 allowed to do that?

3 A. I know there were some old pictures of the

4 place when it wa- -- used to be a -- it used to

5 be a sailing school. I think it was a sailing

6 school. And they had pictures of the dock as

7 it goes out -- as it went out into the harbor

8 with floats.

9 Q. Was that dock longer than the pier that you

10 have today?

11 A. Right. Yes.

12 Q. Did you ask anybody in the Town if you would be

13 allowed to extend the pier prior to your

14 purchase of the property?

15 A. I think we talked it over with Nick Brown.

16 Q. Okay. Anyone other than Nick?

17 A. I don't recall.

18 Q. How long did Nick tell you the extension could

19 be?

20 A. I seem to recall like seven floats. Seven

21 floats. Each float is probably about 10 feet.

22 Q. Those are your --

23 A. That's my recollection, with a T on the end.

24 Q. So it's your testimony that, prior to

11 (Pages 41 to 44)

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1 purchasing the property, Nick Brown, the
 2 realtor, represented to you that you would be
 3 able to extend the pier by 70 feet and put a T
 4 at the end?
 5 A. Right.
 6 Q. After you found out that you could not, did you
 7 approach Nick Brown and ask him why he
 8 represented that to you if that's not, in fact,
 9 the case?
 10 A. I think we -- we wanted the property, no matter
 11 what. If there was a problem as far as the --
 12 the length of the dock, we felt that,
 13 considering the history of that particular
 14 house that we didn't see -- we didn't see where
 15 there would be a problem.
 16 Q. Well, you didn't ask anybody prior to the
 17 purchase. Correct?
 18 A. No. I think only we talked with Nick Brown,
 19 I'm sure.
 20 Q. Okay. And Nick Brown was a realtor. Correct?
 21 He wasn't talking to you as a member of the
 22 town boards?
 23 A. At the time, we might have -- I don't -- he --
 24 it might have become known to -- to us that he

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1 was also on one of the boards --
 2 Q. Did Nick Brown --
 3 A. -- in the town.
 4 Q. -- ever tell you that he was a member of the
 5 board prior to your purchase of the property
 6 and that he was representing himself to you in
 7 the statements he was making to you as a
 8 representative of the Town?
 9 A. I don't -- I don't recall that. No.
 10 Q. Did you have any involvement in discussions
 11 with the Army Corps of Engineers since you've
 12 purchased the property?
 13 A. Have we?
 14 Q. Yes. Have you? Not your wife. I know what
 15 your wife's involvement was.
 16 A. Only -- I'm sure I have.
 17 Q. Do you believe that the Army Corps of Engineers
 18 has discriminated against you in their
 19 decisions concerning your property?
 20 A. Well, all I remember is that we seem to have
 21 had the permits in place for a dock. And then,
 22 all of a sudden, things went about-face.
 23 Q. Do you think the Army Corps of Engineers had
 24 anything to do with that or discriminated

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1 against you in their decisions?
 2 A. I don't know why they would okay something and
 3 then go back on it.
 4 Q. Do you believe that anything that the Town of
 5 Truro did caused the Army Corps to change their
 6 position?
 7 A. I really don't know.
 8 Q. Okay. What about the Department of Pub- -- of
 9 Environmental Protection, do you believe that
 10 the Department or any of its employees have
 11 discriminated against you in their decisions
 12 concerning your property?
 13 A. Again, I just -- I just think that the
 14 inconsis- -- inconsistencies shown to us as
 15 compared to others down there, down at the
 16 Pamet.
 17 Q. And you're -- the inconsistencies of the
 18 Department of Environmental Protection?
 19 A. Rulings that ...
 20 Q. I'm sorry. Did you -- are you done?
 21 A. Yeah.
 22 Q. Okay. All right. Do you know any
 23 other stra- -- any other property owner in
 24 Pamet Harbor who has been allowed to install a

Page 48

1 pool?
 2 A. In Pamet Harbor?
 3 Q. Yes.
 4 A. Right in the harbor, I'd -- not so far.
 5 Q. Do you know anybody else that you believe their
 6 property is similarly situated to your own who
 7 has been allowed to install a pool in the town
 8 of Truro?
 9 A. Well, I believe that the Perrys -- I believe
 10 they're going to be putting in a pool.
 11 Q. What about the Sextons?
 12 A. I don't really know if they're doing a pool or
 13 not.
 14 Q. Okay. So you believe that your property is
 15 similarly situated to the Perrys?
 16 A. I would say they're situated a little
 17 differently.
 18 Q. How are they different?
 19 A. Well, they're in a -- I believe they're in a
 20 dune, kind of a ...
 21 Q. Anything else?
 22 A. They seem to be on a higher plain -- it's a
 23 dune -- whereas we're at more of a kind of a
 24 flat area.

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- 1 Q. Okay. Do you know if there was a structure on
2 the Perrys' property prior to their purchase of
3 it?
4 A. I don't know. I wouldn't know.
5 Q. Do you know anyone else in the Pamet Harbor
6 who's been allowed to construct a garage?
7 A. A garage?
8 Q. Uh-huh.
9 A. Not that I can recall.
10 Q. Do you know any similar -- similarly situated
11 properties to yours that have been allowed to
12 construct a garage?
13 A. Again, the Sexton property. I know they -- I'm
14 pretty sure they have, at least, a two-car
15 garage.
16 Q. Do you believe that the --
17 A. The --
18 Q. I'm sorry.
19 A. Go ahead.
20 Q. Do you believe the Sextons' property is
21 similarly situated to your own?
22 A. I believe they're, actually, in more of a
23 precarious position than our house is.
24 Q. Okay. How so?

Page 50

- 1 A. They're on a coastal -- it's -- as far as I
2 know, it's a dune. Because they originally
3 just constructed it with a concrete foundation.
4 And the Town -- they had to change it and put
5 in piers, I'm pretty sure, because they're
6 right in on it, right into a dune. And, at
7 high tide, I think the water would come right
8 up to their -- just about right up to their --
9 right up to the dwelling.
10 Q. So the Town made them change the construction
11 plan for their property, correct, the Sextons?
12 A. I believe so. I believe it was -- I believe
13 they had to put piers in.
14 Q. Is the Sexton property on a higher elevation
15 than your property?
16 A. As compared to where it is according to where
17 the water is?
18 Q. Yes.
19 A. Or as --
20 Q. Well, your --
21 A. -- according to where our house is?
22 Q. According to where your house is.
23 A. Oh they -- they're on a -- they're situated
24 higher, I believe.

Page 51

- 1 Q. When did you first learn that there had been a
2 one-bedroom restriction placed on your property
3 by the Town (sic) of Selectmen in 1992?
4 A. While we were in the process of buying the
5 house.
6 Q. And who told you that?
7 A. What's that?
8 Q. Was that before you actually closed on the
9 house that you learned that?
10 A. That we knew that there was a?
11 Q. One-bedroom restriction.
12 A. I don't recall. I just -- just remember that
13 we were focused on the property itself as it
14 stood, as it was, with the dwelling that was on
15 it. And that was -- I mean, we liked the
16 house. That was -- our main concern was -- was
17 just purchasing the property. We were going
18 to -- we were going to buy it if the -- if the
19 price was right.
20 Q. Do you recall how you learned that there was a
21 one-bedroom restriction on the property?
22 A. There was another realtor. I don't know if
23 they had brought it -- brought the fact up or
24 if it was Nick Brown.

Page 52

- 1 Q. And you don't remember when that fact was
2 brought up?
3 A. For me, the main thing was the house and the
4 property. So that's what I -- that's what I
5 concentrated on as far as when we were talking
6 with the -- with the realtors.
7 Q. When did you first learn there was a
8 one-bedroom restriction on the house?
9 A. I'm not really sure if it was before or after.
10 Q. What was your understanding when you purchased
11 the house as to the capacity of the septic
12 system?
13 A. I understood that we could have a three-bedroom
14 septic system.
15 Q. What was the capacity of the septic system when
16 you purchased the house?
17 A. I believe it was a three-bedroom.
18 Q. You believe that when you purchased the house,
19 a three-bedroom septic system was already
20 installed?
21 A. Right.
22 Q. Who told you that?
23 A. It wasn't installed when we bought it, but it
24 would be installed when we closed on it.

13 (Pages 49 to 52)

Page 53

1 Q. Was there a septic sys- -- system installed
2 when you purchased the house that was bigger --
3 A. Yes.
4 Q. -- than a one-bedroom?
5 A. That was what?
6 Q. Bigger than a one-bedroom-capacity septic
7 system.
8 A. Right. When we went to close on the house,
9 it -- the septic -- they were supposed to have
10 that all hooked up; and it -- and it didn't.
11 They didn't have it hooked up.
12 Q. What was the capacity of the septic system that
13 was there that wasn't hooked up when you
14 purchased the house?
15 A. I understood that when we purchased the house,
16 we'd have a Title V for a three-bedroom.
17 Q. Okay. Who told you that?
18 A. That's just my understanding, ma'am.
19 Q. Did anyone show you any documentation
20 whatsoever that you had a -- a septic system
21 compliant with Title V for a three-bedroom home
22 when you purchased the house?
23 A. It's just my recollection of -- of what went on
24 back then.

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1 Q. Do you have any documentation to support your
2 recollection?
3 A. I don't know. I'd have to research it.
4 Q. At some point in time, you learned there was a
5 one-bedroom restriction. Correct?
6 A. I remember it was talked about.
7 Q. Okay. And who was it talked about with?
8 A. It might have been talked about with Nick
9 Brown. There was also another realtor
10 involved.
11 Q. Okay. And --
12 A. So ...
13 Q. And when it was talked about, did you ask why
14 there was a three-bedroom septic system
15 installed if you had a one-bedroom restriction?
16 (Pause.)
17 Q. Do you recall at all?
18 A. No.
19 Q. Okay. When -- when did you first speak with
20 Mr. LaJoie about drafting plans for a septic
21 system?
22 A. I would say, probably within, say, six months
23 of after we purchased the house.
24 Q. Did you speak with anyone prior to your

Page 55

1 purchase of the house about drafting plans to
2 install a larger septic system other than
3 Mr. LaJoie?
4 A. I don't recall.
5 Q. Did Mr. LaJoie ever discuss with you the
6 one-bedroom restriction placed on your property
7 in 1992?
8 A. I don't recall.
9 Q. After you learned that there was a one-bedroom
10 restriction on the property, did you discuss
11 with Mr. LaJoie at all the fact that he was
12 present in '92 when the restriction was placed
13 on the property?
14 A. Could you repeat that?
15 Q. Sure. When you learned that there was a
16 be- -- a one-bedroom restriction on the
17 property, did you discuss at all with
18 Mr. LaJoie his being present at the time the
19 one-bedroom restriction was placed on the
20 property by the Board of Selectmen in 1992?
21 A. I don't remember.
22 Q. Do you remember discussing with anyone else
23 other than Nick Brown and this realtor and your
24 attorneys, of course, this one-bedroom

Page 56

1 restriction?
2 A. At some point either before or after the
3 purchase of the house, we might have talked
4 with Dave LaJoie --
5 Q. And if --
6 A. -- from Felco.
7 Q. And if you had known that there was a
8 one-bedroom restriction on the property prior
9 to your purchase of it, would you have
10 purchased the property anyway?
11 A. Would we have?
12 Q. Yes.
13 A. Yeah.
14 Q. Okay.
15 MR. REVERE: One second. Off the record.
16 (A brief discussion was held off the
17 record.)
18 Q. Do you have --
19 MR. REVERE: Okay. We're back on the
20 record.
21 Q. Did you write any letters to any state agencies
22 claiming that you and your wife were being
23 discriminated against and requesting that the
24 State investigate?

14 (Pages 53 to 56)

DUNN & GOUDREAU

1 A. Did I write any letters?
 2 Q. Yes.
 3 A. I might have helped my wife write some letters.
 4 Q. Did you contact the attorney general's office
 5 concerning your investigation into your
 6 property and the treatment by the Town of
 7 Truro?
 8 A. I believe that was my wife.
 9 Q. Did you contact the Ethics Commission at all
 10 concerning un- -- alleged ethical (sic)
 11 behavior by anyone in the town of Truro?
 12 A. Say that again.
 13 Q. Did you contact the Ethics Commission to
 14 discuss the Town of Truro's treatment of you or
 15 your wife concerning your property?
 16 A. I just -- I talked with my wife about that.
 17 Q. Okay. I don't want to know what you talked
 18 about with your wife. I just want to know if
 19 you talked to anybody from the State.
 20 A. I ha- -- I haven't. No.
 21 Q. Okay. Do you believe that the prior town
 22 manager, Mr. Breault, has discriminated against
 23 you or your wife in decisions made concerning
 24 your property? Him specifically?

1 A. I think -- I believe he had an agenda to stop
 2 us from getting the permits we needed or going
 3 forward with improving our property.
 4 Q. And what is the basis for your belief that
 5 Mr. Breault had an agenda?
 6 (Pause.)
 7 A. I think, just the fact that all the rulings
 8 went against us when it -- when it came to
 9 trying to get permits.
 10 Q. Do you have any evidence that Mr. Breault was
 11 involved or a voting member of any of the town
 12 boards who voted to deny your permit
 13 applications?
 14 A. Are we aware of what?
 15 Q. Do you have any evidence that Mr. Breault, the
 16 town manager -- and I might be pronouncing it
 17 incorrectly -- was involved at all or had a
 18 vote in denying any of your permits for your
 19 property?
 20 A. I think he had influence.
 21 Q. Okay. And how did he exert that influence
 22 o- -- over the ZBA, the Zoning Board?
 23 A. Just the fact that he's the town manager.
 24 Q. Do you have any evidence that anyone influenced

1 Mr. Breault in any unethical manner concerning
 2 decisions on your property?
 3 A. I can't say for sure.
 4 Q. Well, do you have any si- -- do you have any --
 5 A. Evidence?
 6 Q. -- even circumstantial --
 7 A. No.
 8 Q. -- evidence?
 9 A. No.
 10 Q. Are you aware that town counsel, Zisson &
 11 Veara, either Sar- -- Sarah Turano-Flores or
 12 Mr. Veara, has been advising the Town
 13 concerning applications you and your wife have
 14 made for the property since 1996?
 15 A. Are we aware that they were coun- -- counsel?
 16 Q. Yes.
 17 A. Yes.
 18 Q. Okay. Do you believe that town counsel has
 19 discriminated against you in any of the
 20 opinions that they have given the Town
 21 concerning your property?
 22 A. Again, I -- I just feel as though anything that
 23 we -- anything that we attempt to do legally as
 24 far as permitting or getting our property to

1 where we'd like it, we're just being ...
 2 Q. I'm asking specifically about town counsel. Do
 3 you believe town counsel holds any malice or
 4 ill will towards you or your wife?
 5 A. I don't know.
 6 Q. Do you believe that town counsel has been
 7 unduly influenced in the rendering of their
 8 opinions to the Town concerning the
 9 construction on your property?
 10 A. I don't know.
 11 Q. Do you have any evidence that they have been --
 12 that town counsel has given other than their
 13 independent opinion to the Town?
 14 A. Only in their denials of -- of our going
 15 forward with our property.
 16 Q. Do you believe that any of town counsel's
 17 opinions to the Town are based on the fact that
 18 your wife is Lebanese?
 19 A. I don't know.
 20 Q. Do you believe that any decisions rendered by
 21 town counsel to Jewish property owners is based
 22 on the fact that they're Jewish?
 23 A. I don't know.
 24 Q. Have you ever heard town counsel say anything

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1 concerning your wife's national origin --
 2 A. No.
 3 Q. -- or ethnicity?
 4 A. No.
 5 Q. So other than -- well, strike that. Do you
 6 believe that the denial of your permit
 7 applications is based on anything other than
 8 the fact that the town boards or town counsel
 9 just disagree with your position as to whether
 10 you should be permitted to build on your
 11 property?
 12 A. Say that again.
 13 Q. Sure. Do you believe that the Tow- -- any town
 14 employees of the Town of Truro, the boards who
 15 have rendered decisions concerning your
 16 property, and town counsel who has given the
 17 Town opinions as to your applications for
 18 construction on your property are based on
 19 anything other than a disagreement between you
 20 and the Town as to what is allowable and what
 21 is allowed to be constructed on your property?
 22 A. I believe it's -- a lot of it's because it's
 23 John and Barbara.
 24 Q. And what is the basis for that belief? Any --

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1 any specific facts you can point me to --
 2 A. Yeah. We've been --
 3 Q. -- that they specifically render their decisions
 4 because you're John and Barbara Cordi-Allen?
 5 A. Yes. Because we've owned the property since
 6 '96. We've not been able to do anything since
 7 that time.
 8 Q. And your belief is that the one-bedroom
 9 restriction's not relevant to the Town's
 10 decision to deny your applications?
 11 (Pause.)
 12 A. I don't believe that the one-bedroom
 13 restriction is the reason that we're being --
 14 that our permits are being rejected.
 15 Q. Do you have any evidence that anyone who has
 16 voted on your permits or the town counsel who
 17 has rendered opinions to the Town concerning
 18 your permit applications holds any malice or
 19 ill will towards you other than the fact that
 20 the permits have been denied?
 21 A. There was that one instance where someone from
 22 the Town, either a selectman or someone, had
 23 said, Look at what the Allens fell into.
 24 Q. And by that, what did he mean? Do you know?

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1 A. I don't know. Maybe there might have been
 2 jealousy there.
 3 Q. That you purchased the property and he didn't?
 4 A. (Witness indicates).
 5 Q. Do you know who that individ- -- you have to
 6 say yes.
 7 A. Oh. Yes. Yes.
 8 Q. Do you know who that individual is who said
 9 that?
 10 A. I don't. I don't know who it is.
 11 Q. Were you present when he said that?
 12 A. I'm not sure if I was present. I remember that
 13 being said. It might have been repeated to me.
 14 Q. Any other comments that you've heard, any
 15 statement to support your -- any ill will or
 16 malice on the part of any board members who
 17 have rendered decisions concerning your
 18 property?
 19 A. That's all I can think of right now.
 20 MS. ECKER: Okay. I don't have any other
 21 questions.
 22 MR. REVERE: Okay.
 23 (Whereupon the deposition was suspended at
 24 3:30 p.m.)

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SIGNATURE PAGE

1
 2
 3
 4 I, JOHN E. ALLEN, do hereby certify that I
 5 have read the foregoing transcript of my
 6 testimony, and I further certify that said
 7 transcript is a true and accurate record of
 8 said testimony.
 9 Dated at , this
 10 day of , 2006.
 11
 12
 13

JOHN E. ALLEN

1 CERTIFICATE
2 COMMONWEALTH OF MASSACHUSETTS
3 COUNTY OF NORFOLK, ss.

4 I, Jo Anne M. Shields, a Professional
5 Shorthand Reporter and Notary Public in and for
6 the Commonwealth of Massachusetts, do hereby
7 certify that JOHN E. ALLEN, the witness whose
8 deposition is hereinbefore set forth, was duly
9 sworn by me and that such deposition is a true
10 and accurate record, to the best of my
11 knowledge, skills and ability, of the testimony
12 given by such witness.

13 I further certify that I am not
14 related to any of the parties in this matter by
15 blood or marriage and that I am in no way
16 interested in the outcome of this matter.

17 IN WITNESS WHEREOF, I have hereunto set
18 my hand and affixed my seal of office this 21st
19 day of April, 2006.
20
21

22 Notary Public

23 My Commission expires:
24 September 29, 2006.

1 ERRATA SHEET
2 CHANGES TO THE DEPOSITION OF JOHN E. ALLEN
3 INSTRUCTIONS TO WITNESS: 1) Please note any
4 desired corrections to your testimony by page
5 and line number. 2) Enter text as it appears
6 in the transcript. 3) Enter text as it should
7 appear.
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PAGE LINE CORRECTION

VOLUME I - 1

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

CIVIL ACTION NO. 05-10370PBS

BARBARA CORDI-ALLEN AND JOHN ALLEN,)
Plaintiffs,)
vs.)
JOSEPH R. CONLON, ARTHUR F. HUTLIN,)
NORMAN H. POPE, KEITH S. ALTHAUS,)
And MARINNA MATRICARDI as they are)
Members and collectively the TRURO)
ZONING BOARD OF APPEALS AND THE)
TOWN OF TRURO, MASSACHUSETTS, AND)
BROOKE NEWMAN,)
Defendants.)

DEPOSITION OF BARBARA CORDI-ALLEN, a

witness called on behalf of the Defendants
pursuant to the Massachusetts Rules of Civil
Procedure before Jo Anne M. Shields,
Professional Shorthand Reporter and Notary
Public in and for the Commonwealth of
Massachusetts, at the offices of Brody,
Hardoon, Perkins & Kesten, LLP, One Exeter
Plaza, Boston, Massachusetts, on Friday,
March 17, 2006, commencing at 10:40 a.m.

DUNN & GOUDREAU COURT REPORTING SERVICE, INC.
One State Street
Boston, Massachusetts 02109
Telephone (617) 742-6900

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APPEARANCES:

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for the Defendants, Joseph R. Conlon,
Arthur F. Hutlin, Norman H. Pope, Keith
S. Althaus, and Marinna Matricardi as
they are Members and collectively the
Truro Zoning Board of Appeals and the
Town of Truro, Massachusetts

JULIE FRUITT BARRY, ESQUIRE
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155 Seaport Boulevard
Boston, Massachusetts 02210-2831
(617) 439-2831
for the Defendant, Brooke Newman

ALSO PRESENT:

Sarah A. Turano-Flores, Attorney At Law
Town Counsel for the Town of Truro

PROCEEDINGS

BARBARA M. CORDI-ALLEN, a

witness called for examination by counsel for
the Defendants, having been satisfactorily
identified by the production of her driver's
license and having been duly sworn, testified
as follows:

DIRECT EXAMINATION

BY MS. BARRY:

Q. Good morning, Ms. Cordi-Allen. My name is
Julie Barry. I'm an attorney for Brooke Newman
in this case.

A. Uh-huh.

MS. BARRY: I'd like to have this marked as
Exhibit 1, please.

(Notice of deposition marked as Cordi-Allen
Exhibit No. 1.)

Q. Just before we get started, I'd like to give
you a few guidelines about your deposition
today. I'll be asking questions, you'll be
answering them, and the court reporter will be
taking down your answers. So I would ask that
you wait until I finish the question --

5

1 A. Okay.

2 Q. -- and I will wait until you finish your answer

3 so that we won't be speaking over one another.

4 A. Uh-huh.

5 Q. If you would answer verbally please, as she

6 can't or won't be looking at you to know

7 whether you were nodding or shaking your head.

8 So verbal answers only. If you need to take a

9 break at any time, please feel free to ask.

10 The only request that I make in that regard is

11 that if there's a question pending that you

12 answer the question before we break.

13 If you have any problems understanding the

14 question that I'm asking you, please let me

15 know; and I'll try to rephrase it. If you

16 answer it, I'll assume that you understand the

17 question.

18 I'd suggest that we just agree to the usual

19 stipulations.

20 MS. ECKER: That's fine.

21 MS. BARRY: All objections reserved, except

22 as to form, including motions to strike.

23 MS. ECKER: That's fine.

24 MS. BARRY: And 30 days to read and sign.

7

1 MR. REVERE: The 7th. Okay. That --

2 assuming we get it. Yeah. I just -- you know,

3 you need to -- I -- I don't expect there are

4 going to be significant changes. But, in any

5 event --

6 MS. BARRY: Okay.

7 MR. REVERE: -- you know.

8 MS. BARRY: If we agree to April 7th, then

9 we'll go from there.

10 MR. REVERE: Yeah. I mean --

11 MS. BARRY: Okay.

12 MR. REVERE: -- I'd love to make it

13 difficult for you and say 30 days, it isn't

14 there. But . . .

15 MS. BARRY: That's not your style. Just --

16 MR. REVERE: No. It isn't mine either.

17 Okay.

18 MS. BARRY: Okay.

19 Q. Can you state your name and address for the

20 record, please?

21 A. Barbara Cordi-Allen, 143 Ardsley Road,

22 Longmeadow, Mass.

23 Q. And how long have you lived at 143 Ards- --

24 Ardsley Road?

6

1 We'll waive the notary.

2 MS. ECKER: Fine.

3 MR. REVERE: Yeah.

4 MS. BARRY: Okay.

5 MR. REVERE: Actually, you have to have

6 your summary judgment motion by the 21st.

7 MS. ECKER: Correct.

8 MS. BARRY: Yeah. So we may want to bump

9 it up. If you can do it in -- by the end of

10 the month, that would be great.

11 MS. ECKER: Well, she has to be able to get

12 us a transcript.

13 MR. REVERE: Right.

14 MS. BARRY: What kind of time are you

15 looking at for a transcript?

16 COURT REPORTER: It's usually a two-week

17 turnaround time. But if you need it earlier,

18 just let me know.

19 MS. ECKER: That's fine.

20 MR. REVERE: Okay.

21 MS. ECKER: So --

22 MR. REVERE: Well, let's --

23 MS. ECKER: -- how about if she gets me a

24 signed transcript by April 7th?

8

1 A. Six years.

2 Q. And do you own the property there?

3 A. Yes.

4 Q. And the property at issue in this case in

5 Truro, 5 Yacht Club Road, do you own that

6 property?

7 A. Yes.

8 Q. Is that in your name and your husband's name?

9 Or is it under a trust or some other form of

10 ownership?

11 A. It's under both our names.

12 Q. Okay. Are you employed --

13 A. No.

14 Q. -- Ms. Cordi-Allen? And have you been deposed

15 before?

16 A. Yes.

17 Q. And can you tell me how many times?

18 A. I think, once.

19 Q. Okay. And what was that in connection with?

20 A. Oh, or maybe it was once or twice. For my leg

21 injury.

22 Q. Okay. And was that a lawsuit in which you were

23 the plaintiff?

24 A. Yes.

1 Q. Okay. Has that case since been resolved?
 2 A. No.
 3 Q. Okay. Do you know or have an understanding of
 4 where that case is -- has been filed? Is it in
 5 State Court or Federal --
 6 A. Federal.
 7 Q. -- Court? Federal Court. In Massachusetts?
 8 A. Yes.
 9 Q. Okay.
 10 A. Uh-huh.
 11 Q. Okay. What did you do to prepare for your
 12 deposition today?
 13 A. I just went over the interrogatories.
 14 Q. Okay. Did you review any documents other than
 15 the interrogatories?
 16 A. No.
 17 Q. Did you bring any documents with you today?
 18 A. Just the -- the interrogatories.
 19 Q. And when you say "the interrogatories," are you
 20 referring to your answers to the --
 21 A. Yes.
 22 Q. -- interrogatories?
 23 A. Uh-huh. Yes. And I brought a letter to give
 24 to Sarah, because the Town does no respond. So

1 Q. -- today?
 2 A. Yes.
 3 Q. Are you aware that we've requested, through
 4 your attorney, Mr. Revere, that you produce
 5 documents concerning this matter?
 6 A. I don't -- he has everything I have. So I -- I
 7 don't know if --
 8 Q. Okay.
 9 A. You mean, additional stuff?
 10 Q. Yeah. Let me ask you. Let me show you a
 11 document, and it may help to --
 12 A. Okay.
 13 Q. -- clarify.
 14 MS. BARRY: Can you mark that as the next
 15 exhibit.
 16 (Document entitled "Defendant Brooke
 17 Newman's First Request to Barbara
 18 Cordi-Allen for Production of Documents"
 19 marked as Cordi-Allen Exhibit No. 2.)
 20 Q. I've handed you a document that's been marked
 21 Exhibit -- Cordi-Allen Exhibit 2 and ask if
 22 you've seen that document before.
 23 A. I don't -- I don't remember it.
 24 Q. Okay. So it's fair to say you haven't seen it

1 now they can't say they didn't get it.
 2 MR. REVERE: Okay. No. In fact, that
 3 was -- sorry to interrupt you, she just handed
 4 me a letter. I think she had forgotten that
 5 she -- then she --
 6 THE WITNESS: Yeah. I did give --
 7 MR. REVERE: -- realized it. So -- so I
 8 don't know. I haven't even read it. So . . .
 9 Q. Okay. I'm going to put that aside and go on.
 10 Did you speak to anyone today about your
 11 deposition other than your attorney, Mr. Revere?
 12 A. No.
 13 Q. Ms. Cordi-Allen, you filed a Complaint in
 14 Superior Court, which has been since removed to
 15 Federal District Court, appealing, among other
 16 things, a decision of the Zoning Board of
 17 Appeals upholding the decision of the building
 18 commissioner over the building commissioner's
 19 issuance of a building permit to a property
 20 owned by Ms. Brooke Newman at 3 Yacht Club
 21 Road; is that correct?
 22 A. I believe so.
 23 Q. Okay. And Mr. Revere represents you --
 24 A. Uh-huh.

1 before; is that correct?
 2 A. I just don't remember it.
 3 MS. BARRY: Okay. Can you mark this as the
 4 next exhibit, please.
 5 (Document entitled "Plaintiffs John Allen
 6 and Barbara Cordi-Allen's Response to
 7 Defendant Newman's Document Request" marked
 8 as Cordi-Allen Exhibit No. 3.)
 9 Q. You've been handed a document that's marked
 10 Cordi-Allen Exhibit 3. I'd ask if you would
 11 look at that, take your time, and let me know
 12 if you've seen that before.
 13 A. I don't remember.
 14 Q. You don't remember having seen it? Or you
 15 don't --
 16 A. Yeah.
 17 Q. -- remember?
 18 A. I don't remember seeing it.
 19 Q. Okay. Exhibit 3 is a -- a document entitled
 20 "Plaintiffs John Allen and Barbara
 21 Cordi-Allen's Response to Defendant Newman's
 22 Document Request." Did you assist your
 23 attorney in looking for documents that were
 24 responsive to these requests?

13

1 A. No.

2 Q. If I understand from your previous answer, you

3 have given your files concerning this matter

4 and other town matters, I assume, to your

5 attorney, Mr. --

6 A. Yes.

7 Q. -- Revere; is --

8 A. Uh-huh.

9 Q. -- that correct?

10 A. Yes.

11 Q. Is it fair to say that Mr. Revere now has all

12 of your files and other documents pertaining to

13 this matter?

14 A. He -- well, he should have, pretty much,

15 everything. I -- there could be stragglers

16 here or there. But I gave him just about

17 everything.

18 Q. Before you gave your documents and your files

19 to Mr. Revere, how would you ordinarily have

20 kept these documents?

21 A. They were with another lawyer.

22 Q. Oh, okay. And who was that lawyer?

23 A. Greg McGregor.

24 Q. Okay. Did Attorney McGregor then transmit the

14

1 files to your current attorney, Mr. Revere?

2 A. No.

3 Q. He transmitted them to you, and then you --

4 A. Yes.

5 Q. -- transmitted them to --

6 A. Yes.

7 Q. -- Mr. Revere?

8 A. I believe so. Yes.

9 Q. Okay. As part of Exhibit 3, your attorney,

10 Mr. Revere, has produced to us a number of

11 documents that purport to be responsive to the

12 quest- -- requests that we've made. Do you

13 recall whether you saw the documents? I'm not

14 going to mark these as an exhibit. I'll have

15 you look through them and ask if you recall

16 assisting or otherwise seeing those documents

17 before they were produced to me.

18 A. I haven't seen all of these.

19 Q. Okay.

20 A. That -- I don't --

21 Q. Okay. Let me take that back. It's my

22 understanding that these documents are copies

23 of documents that are from your files that have

24 been given to your attorney.

15

1 MS. BARRY: And I just would like to note

2 for the record, Paul, that I don't think this

3 production complies with Rule 34 because this

4 isn't how they're kept in the ordinary course

5 of business. And there's not indication on

6 these documents as to what they're responsive

7 to pertinent to the request. So I'd ask

8 that -- if this response could be supplemented.

9 I'm assuming you kept a copy of these for

10 yourself. And if you could --

11 MR. REVERE: Yes.

12 MS. BARRY: -- identify for me which of

13 these documents responds to which of the

14 requests in the document requests, that would

15 be helpful.

16 MR. REVERE: Okay. I believe that --

17 MS. BARRY: There's no -- there's no --

18 there's no, like, tabs that say, you know,

19 Question 1, Question 2, Question 3. So I don't

20 know. It's just documents. And I -- and I

21 have seen your production to the Town, and I

22 know she had --

23 MR. REVERE: The ordinary course.

24 MS. BARRY: Yeah. So I know this is not

16

1 the ordinary course. So I would just --

2 MR. REVERE: Okay.

3 MS. BARRY: -- ask that if you would please

4 provide me with the designation as to what

5 these documents respond -- what particular

6 questions they respond to, that would be very

7 helpful.

8 MR. REVERE: Okay. And I think I kept a

9 copy of --

10 MS. BARRY: If you --

11 MR. REVERE: -- exactly what I sent you.

12 MS. BARRY: If you didn't, let me know; and

13 I'll arrange --

14 MR. REVERE: Okay.

15 MS. BARRY: -- to have copies sent.

16 MR. REVERE: It'll just take me a minute to

17 look at them.

18 MS. BARRY: Okay.

19 MR. REVERE: But --

20 MS. BARRY: Okay.

21 Q. Do you use e-mail at home or work,

22 Ms. Cordi-Allen?

23 A. I don't work.

24 Q. Okay. Sorry. That's correct. You've already

17

1 told me that. Do you use e-mail at home?

2 A. Sometimes.

3 Q. Okay. Did you provide or otherwise do anything

4 to search through your e-mail or computer files

5 for documents that concern your lawsuit against

6 the Town and Brooke Newman?

7 A. When?

8 Q. At any time since this lawsuit has been filed,

9 have you provided copies of your e-mails to

10 your attorney?

11 A. I believe everything I had went to Greg

12 McGregor, which went to Paul Revere.

13 Q. Okay. We would ask that if you would make a

14 search of your e-mail and if your attorney

15 could let us know what search -- what you've

16 done to make sure that any responsive documents

17 contained in your e-mail or computer files have

18 also been produced as part of the production

19 that you've made.

20 MR. REVERE: Can we go off the record for

21 just a second?

22 MS. BARRY: Sure.

23 (A brief discussion was held off the

24 record.)

18

1 MS. BARRY: We have discussed the review

2 and research concerning what e-mails and what

3 search was done of Ms. Cordi-Allen's e-mail for

4 responsive documents and have agreed that

5 Attorney Revere will provide to me and

6 Ms. Ecker confirmation of what search was

7 undertaken and whether there are any other

8 e-mails that were not produced that -- that are

9 not somehow privileged, that they will be

10 subsequently produced by March 31st.

11 Can we mark this as the next exhibit.

12 (Letter to Steve Williams from Mr. and

13 Mrs. John Allen dated 9/20/98 marked as

14 Cordi-Allen Exhibit No. 4.)

15 Q. Ms. Cordi-Allen, you've been handed a document

16 that's been marked Cordi-Allen Exhibit 4. I'd

17 ask if you could look at that and let me know

18 if you recognize it.

19 A. Yeah. Uh-huh.

20 Q. And what do you recognize that to be?

21 A. A letter to the building inspector.

22 Q. And what does that letter concern?

23 A. Brooke Newman's building permit.

24 Q. And the date on that letter is? I'm sorry. I

19

1 don't have a copy in front of me.

2 A. September 20th, 1998.

3 Q. September 20th, 1998. And is it fair to say

4 that that's a letter complaining about a

5 building permit being -- or a building permit

6 sought by or being issued to Ms. Newman for her

7 property at 3 Yacht Club Road?

8 A. I have to read it.

9 Q. Okay. Take your time.

10 (Pause.)

11 A. Yes. Okay.

12 MS. BARRY: Can you read back the question,

13 please.

14 (Question read back.)

15 Q. So is it fair to say that that letter concerns

16 the building permit that was being sought by

17 Ms. Newman?

18 A. Yes.

19 Q. And is it fair to say that you objected to a

20 building permit being sought by Ms. Newman or

21 issued by the building inspector?

22 A. Based on a contradiction of the ruling of the

23 Board of Health.

24 Q. Okay. I understand that there may be -- that

20

1 you have reasons. But I'm just trying to

2 ans- -- have you answer my question. Is it

3 fair to say that -- that -- that you had an

4 objection to a building permit being --

5 A. Yes.

6 Q. -- issued to Ms. Newman for the property --

7 A. Uh-huh.

8 Q. -- at 3 Yacht --

9 A. Yes.

10 Q. -- Club Road? Now, the documents that I've

11 received in response to the document request,

12 this letter, September 20th, 1998, is the

13 latest -- the letter with the latest date

14 concerning this building permit being issued to

15 Ms. Newman. Do you recall if you wrote any

16 letters in or about that time after

17 September 20th, 1998 to the building inspector?

18 A. I don't remember.

19 Q. Okay. Did you appeal the building inspector's

20 issuance of the permit -- building permit to

21 Ms. Newman in or about 1998?

22 A. Could you repeat that?

23 Q. Did you appeal the building inspector's

24 issuance of the building permit to Ms. Newman

21

1 in or about 1998? Did you file an appeal in
 2 1998 of the building permit?
 3 A. No.
 4 Q. Why not?
 5 A. We waited for a response for -- from the
 6 building inspector and my attorney, Bill
 7 Thomas, who -- God rest his soul -- has passed
 8 away. And he was dealing with the matter.
 9 Maybe he did. I don't remember.
 10 Q. Okay.
 11 A. He may have. I -- I know there was something
 12 in court. But . . .
 13 Q. It's fair to say you didn't appeal the issuance
 14 of the building permit to the Board of Appeals
 15 in 1998; is that correct?
 16 A. If -- if it was done, it was done through my
 17 attorney. And I don't remember.
 18 Q. Okay.
 19 A. But I -- I personally didn't file any --
 20 Q. Okay.
 21 A. -- that I know of.
 22 Q. Okay. Do you recall getting a response from
 23 the building inspector to your letter?
 24 A. No.

22

1 Q. You don't recall? Or you didn't get one?
 2 A. I don't believe I got one.
 3 Q. You're seeking to expand your existing cottage
 4 at 5 Yacht Club Road, as well as build a -- a
 5 two-story addition on the property; is that
 6 correct?
 7 A. Yes.
 8 Q. Okay. And -- and your property is adjacent to
 9 Ms. Newman's; is that correct?
 10 A. Yes.
 11 Q. Okay. Have you sought a building permit yet
 12 for the proposed expansion --
 13 A. Yes.
 14 Q. -- and the new structure? You have sought a
 15 building permit?
 16 A. Uh-huh.
 17 Q. When did you file for a building permit?
 18 A. 1996.
 19 Q. Have you sought for zo- -- have you sought
 20 zoning relief from the Board of Appeals for the
 21 proposed expansion and new structure?
 22 A. Don't need to.
 23 Q. My question is, have you sought zoning relief
 24 from the Board of Appeals for the proposed

23

1 project on your property?
 2 A. Have we? Not to my knowledge.
 3 Q. Okay.
 4 MS. BARRY: Can you mark that as the next
 5 exhibit.
 6 (Aerial photograph marked as Cordi-Allen
 7 Exhibit No. 5.)
 8 Q. Now, in the letter that's Exhibit 4 to the
 9 building inspector dated September 20th, 1998,
 10 can you just look at that and let me know if
 11 you've alleged that there's any impact to your
 12 property as a result of the building permit
 13 being issued to Ms. Newman?
 14 A. Yes.
 15 Q. What have you alleged in that letter that says
 16 there's an impact to your property?
 17 A. That it's in the flood zone and that her
 18 property's in the flood zone and that the well
 19 is supposed to be on site. And according to
 20 what's been said by Brooke Newman, any water
 21 that we use, which is hundreds and hundreds of
 22 yards away from her well, would affect the
 23 water sup- -- her water supply.
 24 Q. But what I'm asking you -- I -- I understand

24

1 you have those issues -- but what I'm asking --
 2 A. Uh-huh.
 3 Q. -- you specifically is, concerning that letter,
 4 what impacts to your property at 5 Yacht Club
 5 Road result from the issuance of a building
 6 permit to Ms. Newman? A building permit.
 7 A. The violations of the Board of Health.
 8 Q. How -- but this -- we're talking about the
 9 building permit. Is it your understanding the
 10 building permit is issued by the building
 11 commissioner?
 12 A. No, not solely.
 13 Q. Okay. Let me go back to my question then,
 14 because it's really very narrow. I'm talking
 15 about the letter that is in front of you at
 16 Exhibit 4, and I'm asking that you confine your
 17 response to that. Based -- is there anything
 18 in that letter that alleges that there is an
 19 impact to your property at 5 Yacht Club Road as
 20 a result of the building permit requested by
 21 Brooke Newman or to be issued by the Board --
 22 by the building inspector?
 23 A. The impact here is --
 24 Q. Is it in the letter, please?

25

1 A. Yes. Yes. The consistency.
2 Q. And when you say "consistency," what are you
3 re- --
4 A. In decisions.
5 Q. Okay. Let's -- let's not talk over each other.
6 When you say "consistency," you mean, the
7 consistency in the decisions of the town
8 officials? Is that what you're referring to?
9 A. Yeah.
10 Q. Okay. All right. And so, again, I'm going to
11 ask you, what is the impact to your physical
12 property as a result of the building permit
13 being issued to Brooke Newman as alleged in
14 that letter? Please show me where.
15 (Pause.)
16 A. I -- I don't know if I'm really targeting what
17 you're saying. But it's here that she's in a
18 flood zone. That's an impact on our property.
19 Q. Okay. Let's take that then. How is that an
20 impact on your property?
21 A. Being in a flood zone?
22 Q. How is it an impact on your property that her
23 property is -- if -- if -- is, as you've --
24 A. 'Cause it --

26

1 Q. -- alleged -- please let me finish -- in a
2 flood zone?
3 A. According to what has been said by Brooke
4 Newman, the water cannot flow properly because,
5 in her case, it's supposed to be up on pilings.
6 Q. Okay.
7 A. It is not. It's a --
8 Q. I'm going to stop you there --
9 A. -- full foundation.
10 Q. -- because that's going way far afield. I'm
11 going to give you an opportunity to tell me --
12 let you tell me all of your objections to
13 Ms. Newman's modifications that were allowed by
14 that building permit. But that's not what I'm
15 after right now. All I'm really trying to get
16 at is that you don't allege any specific
17 impacts to your property as a result of the
18 building permit in that letter, Exhibit 4,
19 dated Septemeber 1998; is that correct?
20 A. I wouldn't say that's correct.
21 Q. Okay.
22 A. I think there's some.
23 Q. All right. Then we'll agree to disagree.
24 MR. REVERE: Can we just have a second?

27

1 Focus on the question. She's only asking you
2 about the letter. If it's not in the letter --
3 just focus on the question. Okay.
4 Q. That's fine. I'm not trying to --
5 MR. REVERE: Yeah.
6 Q. -- trip you up.
7 MR. REVERE: No. Yeah. She -- just focus
8 on what she's saying.
9 THE WITNESS: Uh-huh.
10 MR. REVERE: Okay?
11 Q. I'm going to show you what has been marked as
12 Exhibit 5. I can represent to you that this
13 was a document that was produced in the
14 documents to the Town from your attorney --
15 A. Uh-huh.
16 Q. -- and ask if you can look at that and tell me
17 if you recognize it.
18 A. Yes.
19 Q. What do you recognize that to be?
20 A. That was something the Army Corps of Engineers
21 did.
22 Q. Is it an aerial photograph done by the Army
23 Corps of Engineers?
24 A. Yes.

28

1 Q. Okay. Now, if you look at this aerial, can --
2 is your property and the structure thereon
3 depicted in this photograph?
4 A. Yes.
5 Q. Can you point to me where that is?
6 A. Okay.
7 (The witness complies.)
8 Q. So you're indicating just to the left of the
9 red line that appears to be drawn adjacent to a
10 dock structure --
11 A. Yes.
12 Q. -- is that correct? And can you also identify
13 for me, what is the structure immediately
14 across? This looks like a small path from your
15 structure.
16 A. The yacht club.
17 Q. That's the yacht club.
18 A. Excuse me one second. I want to see something.
19 MR. REVERE: Talk to her.
20 THE WITNESS: No. I know. But I wanted
21 you to see something.
22 MR. REVERE: Yeah.
23 THE WITNESS: Okay.
24 Q. Do you have something you want to add to

29

1 that --
 2 MR. REVERE: No.
 3 Q. -- answer?
 4 MR. REVERE: Just . . .
 5 Q. Okay. If you would please show me on this
 6 Exhibit 5 where Brooke Newman's house is
 7 located.
 8 A. This is it.
 9 Q. Okay. And you've pointed --
 10 MR. REVERE: Could we -- I can get you
 11 another copy of that if you've got a problem.
 12 I -- 'cause I think it would be better if she
 13 marked it, you know, circled, you know, put a
 14 letter --
 15 THE WITNESS: Oh --
 16 MR. REVERE: -- you know, pointing.
 17 THE WITNESS: -- he's saying for me to
 18 label it, I guess.
 19 MS. BARRY: Yeah. No. That's fine. I
 20 understand.
 21 MR. REVERE: Okay.
 22 MS. BARRY: I mean, my questions are
 23 really, in this --
 24 MR. REVERE: Okay.

30

1 MS. BARRY: -- for -- for purposes of this,
 2 so general that I don't really think that's --
 3 MR. REVERE: Okay.
 4 MS. BARRY: -- even necessary. If -- if it
 5 appear -- if you think that it is -- and I
 6 don't -- I mean --
 7 MR. REVERE: Okay. If you can understand.
 8 MS. BARRY: You don't need to be taking all
 9 this down. Let's go off the record.
 10 (A brief discussion was held off the
 11 record.)
 12 MS. BARRY: Now, please go back on.
 13 Q. All right. So on Exhibit 5, you have drawn a
 14 red circle around your structure. And if you
 15 would put a CA next to it.
 16 (The witness complies.)
 17 Q. And you have also drawn a red circle around the
 18 structure that you have identified as Brooke
 19 Newman's house --
 20 A. Yes.
 21 Q. -- at 3 Yacht Club Road.
 22 A. Yes.
 23 Q. And you have drawn a -- or written "BN" next to
 24 that circle; is that correct?

31

1 A. Yes.
 2 Q. Okay. Now, it's fair to say, isn't it, that
 3 your property is closer to the water than
 4 Ms. Newman's?
 5 A. Yes.
 6 Q. Okay. And your property has a dock. It looks
 7 like an existing dock structure extending from
 8 some point on your property out to -- it looks
 9 like a tidal flat; is that correct?
 10 A. Yes.
 11 Q. And can you tell me, what is the red line
 12 that's drawn at the end of the dock and then
 13 extending out to the water depicted on this
 14 photo?
 15 A. That was the previous permitted dock and -- by
 16 the DEP and also permitted by the Town of Truro
 17 for -- for us --
 18 Q. So --
 19 A. -- in 1996.
 20 Q. Okay. So this -- this depicts what would have
 21 been a proposed dock extension; is that
 22 correct?
 23 A. Not proposed. It was approved.
 24 Q. I understand. But this -- there's not,

32

1 actually, a dock --
 2 A. Well --
 3 Q. -- extension --
 4 A. -- there are --
 5 Q. -- there?
 6 A. -- floats. There are floats.
 7 Q. Okay.
 8 A. So you . . .
 9 Q. Okay.
 10 A. And . . .
 11 Q. Okay. Now, this is the question I told you
 12 that I -- that I intended to ask you. What are
 13 your objections to the building permit that was
 14 granted to Ms. Newman for the modifications to
 15 her dwelling at 3 Yacht Club Drive?
 16 A. What are they?
 17 Q. Uh-huh.
 18 A. She does not have proper permits --
 19 Q. Let me --
 20 A. -- for what she built.
 21 Q. Let me stop --
 22 A. They're not --
 23 Q. -- you there. And we'll --
 24 A. Okay.

33

1 Q. -- take it one by one. She doesn't have proper
2 permits.
3 A. Right.
4 Q. What permits do you allege that she needs?
5 A. Proper location. The house is supposed to be
6 on pilings. She's brought in fill, which will
7 definitely cause problems for flooding. She's
8 brought in plantings. None of this was on her
9 order of intent.
10 Q. Let me just -- let me stop you there, 'cause I
11 just want to make sure that you're
12 understanding my question.
13 A. Uh-huh.
14 Q. I'm talking about the building permit.
15 A. It's all part of getting a building permit.
16 Q. Okay.
17 A. You have to get those approvals first.
18 Q. Okay. So what permits are you suggesting that
19 she needed that she didn't get?
20 A. She didn't get proper building permits as, like
21 I said, site location. She altered her plans.
22 And the Conservation approvals are missing for
23 what she has. They don't coincide. What she
24 has is different than what she was issued.

34

1 Q. Can you clarify what you just said?
2 A. Yeah.
3 Q. What she has is --
4 A. She --
5 Q. -- different --
6 A. Right.
7 Q. -- from what?
8 A. She has -- from Conservation Commission, she
9 has no approval for trees or fill. And you
10 cannot bring in either in that area. She does
11 not have her house, which is, according to her,
12 in a flood zone, in an environment that would
13 require her house be put on pilings. And she
14 has a full basement. You can't have a full
15 basement from what we've been told. So . . .
16 Q. And when you say "from what we've been told,"
17 told by who?
18 A. By Brooke Newman, her attorneys, and town
19 officials.
20 Q. In connection with her house or your
21 proposed --
22 A. Oh, with our --
23 Q. -- structure?
24 A. -- with ours. But, also, that hers, in looking

35

1 at her permits, they're not -- they're not
2 accurate for what she has.
3 Q. What permits are you referring to again? Are
4 you referring to the building permit,
5 Ms. Cordi-Allen?
6 A. Bo- -- both the building permits and the
7 Conservation Commission permits. She's put a
8 fence up on property that's not hers.
9 Q. Now, regarding the fence, are you talking about
10 a Conservation Commission permit or the
11 building permit?
12 A. Both.
13 Q. Was the fence a part of the building permit
14 that was issued to Ms. Newman that you are
15 objecting to?
16 A. The location.
17 Q. I'm -- let me -- let me backtrack and make sure
18 you understand. I'm trying to confine my
19 questions here to this lawsuit.
20 A. Uh-huh.
21 Q. Do you understand that you have appealed the
22 Zoning Board's upholding of the building
23 commissioner's issuance of a building permit to
24 Ms. Newman in 1998?

36

1 A. Yes.
2 Q. Okay. I'm talking about the building permit.
3 So I would like to know what objections you
4 have to the building permit issued to
5 Ms. Newman for modifications to her property.
6 A. You have to go --
7 Q. The building permit.
8 A. Yeah. But to go through -- to get a building
9 permit, you have to have other permits. It's
10 not one permit. It's --
11 Q. What do you base that on?
12 A. What do I base it on?
13 Q. Uh-huh.
14 A. Truro's regulations that they've told us. So I
15 would assume that they're for everybody.
16 Q. So you're basing your analogy of the
17 requirements for Ms. Newman's property and the
18 modifications to the structure thereon based on
19 the requirements for the structure that you
20 proposed to develop at 5 Yacht Club Road?
21 A. Yes. And the -- the town regulations.
22 Q. The town regulations pertaining to the
23 development of your property?
24 A. No. Of any property supposedly down there and

37

1 also DEP regulations.
 2 Q. Okay. You understand this is not a lawsuit
 3 concerning DEP.
 4 A. You have to have the proper permits. And
 5 Conservation Commission's supposed to grant
 6 proper permits according to DEP regulations,
 7 and they're missing.
 8 Q. Okay. Anything else?
 9 A. Board of Health regulations.
 10 Q. What -- and what specifically about the Board
 11 of Health regulations?
 12 A. She has no permit for her well either from
 13 Conservation Commission nor from the Board of
 14 Health.
 15 Q. What do you base that statement on?
 16 A. The Board of Health, my discussions with the
 17 Board of Health.
 18 Q. Is it your understanding that the building
 19 inspector has to confirm with other town
 20 officials that any necessary permits have been
 21 obtained before he issues a building permit?
 22 A. That they're supposed to? Is that --
 23 MS. BARRY: Read back --
 24 A. -- what you're asking?

38

1 MS. BARRY: -- the question.
 2 A. Yeah.
 3 (Question read back.)
 4 A. I can't answer that. I -- I would assume that,
 5 but I can't say that that's what they do do.
 6 Q. So you don't know?
 7 A. Right.
 8 Q. Do you have any other objections to the
 9 building permit that was granted to Ms. Newman
 10 for the modifications to her dwelling at 3
 11 Yacht Club Road?
 12 A. The setbacks.
 13 Q. What about --
 14 A. I --
 15 Q. -- the setbacks?
 16 A. Property lines.
 17 Q. What -- could you please --
 18 A. I don't --
 19 Q. -- tell me in more detail what you're saying?
 20 Because I don't --
 21 A. If her --
 22 Q. -- understand.
 23 A. -- house is properly located, it meets the
 24 regulations for setbacks for her house, her

39

1 septic. Her well is now off-property.
 2 Q. What do you base that on?
 3 A. I saw it.
 4 Q. You saw what?
 5 A. Her well off-property. And the location of the
 6 house in terms of property lines, it looks very
 7 close.
 8 Q. It looks very close. Do you have a survey or
 9 something else upon which you based your --
 10 A. We've had --
 11 Q. -- statement?
 12 A. -- the property surveyed, and people down there
 13 have removed the stakes umpteen times. So . . .
 14 Q. Excuse me. Let me make sure that I understand
 15 you. You've had Ms. Newman's property
 16 surveyed?
 17 A. My property.
 18 Q. Do you have any basis for your statement, other
 19 than your belief that it looks pretty close,
 20 that Ms. Newman's structure does not comply
 21 with the setbacks?
 22 A. I have not measured her property. But her
 23 placing her fence in the middle of Yacht Club
 24 Road shows that she wants people to see or

40

1 think she owns more property. And --
 2 Q. That's not really what I've asked you though.
 3 What I've asked is whether you have a basis for
 4 your statement that Ms. Newman's structure does
 5 not comply with the setback other than your
 6 belief.
 7 A. Well, I have not measured it. But . . .
 8 Q. So have you --
 9 A. I have not.
 10 Q. -- hired -- have you hired a surveyor or any
 11 other expert to measure Ms. Newman's property?
 12 A. Not yet. Not yet.
 13 Q. Are you intending to hire someone in connection
 14 with this lawsuit?
 15 A. We may. We may.
 16 Q. Now, I need to know. The purpose of this
 17 deposition --
 18 A. I have not --
 19 Q. -- Ms. Cordi-Allen --
 20 A. -- discussed that with my attorney.
 21 Q. Well, I -- if you -- I need to know. The
 22 question is, do you have an intent to retain
 23 a -- a surveyor or other expert to survey the
 24 structure at 3 Yacht Club Road to determine

41

1 whether it complies with setbacks?

2 A. We may.

3 Q. Do --

4 MR. REVERE: Can we go off the record?

5 MS. BARRY: Yes, please.

6 (A brief discussion was held off the

7 record.)

8 MR. REVERE: Back on the record.

9 MS. BARRY: Okay. Thank you.

10 MR. REVERE: If you want that on the

11 record, we can put that on the record.

12 MS. BARRY: We'd like to note for the

13 record that Ms. -- Mr. Revere has confirmed

14 that there is no intent to hire a surveyor to

15 survey Ms. Newman's property, which is in

16 accordance with not only the Rule 26 disclosure

17 that was previously made by the plaintiffs in

18 this matter, but also with the interrogatory

19 answers that were provided to the Town.

20 Q. Okay. Do you have any other objections to the

21 building permit that was granted to Ms. Newman

22 for modifications of the dwelling at 3 Yacht

23 Club Road?

24 A. Okay. Consistent treatment.

42

1 Q. When you say "consistent treatment," what do

2 you mean?

3 A. The way one gets their building permits for one

4 person should be consistent for everybody.

5 Q. And you're specifically speaking about the way

6 that Ms. Newman got her building permits

7 com- -- and the treatment compared to the

8 treatment that you claim that you have

9 received?

10 A. Exactly. Uh-huh.

11 Q. Okay. Anything else?

12 A. The only other thing is the encroachment on my

13 property.

14 Q. What encroachment are you referring to?

15 A. She's been trespassing on my property.

16 Q. Okay. That's a different issue. Do you

17 understand that there is a le- -- that the term

18 "encroachment" has legal significance?

19 A. No. I thought that just meant coming, you

20 know, on people's property.

21 Q. Okay. That's -- that's an issue that I'm going

22 to get to later.

23 A. Okay.

24 Q. Right now, I'm just trying to determine --

43

1 you're not -- you're not suggesting right now,

2 are you, that Ms. Newman's structure encroaches

3 on your property? And I'm talking

4 specifically --

5 A. The house?

6 Q. -- about the house.

7 A. No. No.

8 Q. It's fair to say, isn't it, that Ms. Newman's

9 house, prior to the modifications, did not

10 block your view of the water; is that correct?

11 A. The water in front of me?

12 Q. Uh-huh.

13 A. No.

14 Q. Okay. And is it fair to say that after the

15 house was -- the modifications were made to the

16 house under the building permit that it doesn't

17 block your view to the water?

18 A. Well, there's water back there. But I never

19 even considered that. That's not part of my

20 concern.

21 Q. Okay. So you don't --

22 A. But there's water all the way around.

23 Q. Okay. So -- but your -- your problem with the

24 modifications made to Ms. Newman's structure

44

1 are not based on any interference with your

2 view from your property?

3 A. Exactly.

4 Q. Okay. This question is slightly different.

5 A. Uh-huh.

6 Q. It still goes to the building permit and the

7 upholding of that permit by the Board of Appeal

8 decision. And I would like to know, how have

9 your property rights or legal interest been

10 harmed as a result of that decision by the

11 Board of Appeals to uphold the issuance of the

12 building inspector's building permit to

13 Ms. Newman for the modifications to the

14 structure at 3 Yacht Club Road?

15 A. I believe the Town dragged it out.

16 Q. When you say that, what do you mean? The Town

17 dragged what out?

18 A. Responding to my attorney, they took ex- --

19 extensive time to review her lack of proper

20 permits.

21 Q. And when you say "extensive time to review,"

22 who -- who are you talking about particularly

23 in the town? And what are you specifically

24 referring to?

45

1 A. I know my attorney wrote a letter to the Town
2 of Truro; and he wrote about the problems with
3 her not having proper permits and bringing in
4 fill, et cetera, trees, the -- her fence not on
5 her property, house not sited where it was
6 supposed to be, not elevated.
7 Q. Okay.
8 A. And he did not get a response in a timely
9 manner.
10 Q. What else? How else have your property rights
11 or legal interest been impacted by the decision
12 of the Board of Appeals upholding the building
13 inspector's issuance of a building permit to
14 Ms. Newman?
15 A. I sure as heck can't get away with what she's
16 gotten away with.
17 Q. What do you mean by that?
18 A. It's taken 11 years so far or ten years so far.
19 She just went in, built; and that was it.
20 And . . .
21 Q. How is that an impact from the Board of
22 Appeals' decision upholding the building
23 inspector's issuance of a building permit to
24 Ms. Newman?

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1 A. They still had -- they are fighting us. The
2 Town of Truro's fighting us. Yet when people
3 have violated regulations, they've done nothing
4 in terms of the enforcement.
5 Q. Let me see if I can be more clear because I'm
6 afraid you -- do you --
7 A. You know, I'm on a lot of medication too. So
8 that's why I kind of go off, just so you know.
9 Q. Are you on --
10 A. So sometimes, you have to --
11 Q. -- medication today?
12 A. Yeah. I didn't know if you knew that.
13 Q. No.
14 A. So sometimes, you have to make sure I focus
15 because --
16 Q. Okay.
17 A. -- I do, you know, go off, obviously.
18 Q. Let me just give you a little explanation --
19 A. Uh-huh.
20 Q. -- that may help you. This --
21 MS. ECKER: Excuse me. Could I just
22 interrupt you?
23 MS. BARRY: Yes, please.
24 MS. ECKER: I'm very sorry. Are you on any

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1 medication today that would affect your ability
2 to testify?
3 THE WITNESS: No.
4 MS. ECKER: Okay.
5 THE WITNESS: I can -- I just go off. So
6 if I do, like, she's been patient. But if I
7 don't answer exactly, she's brought -- had to
8 bring me back.
9 MS. ECKER: Does the medication --
10 THE WITNESS: So . . .
11 MS. ECKER: -- affect your ability to tell
12 the truth?
13 THE WITNESS: No, not at all.
14 MS. ECKER: Does the medication affect your
15 ability to recall facts that occurred as
16 regards to this lawsuit and your property?
17 THE WITNESS: No.
18 MS. ECKER: Okay.
19 MS. BARRY: Okay. Thank you.
20 THE WITNESS: It's just that, sometimes,
21 my -- I think, you know, too wide.
22 MS. BARRY: I understand.
23 BY MS. BARRY:
24 Q. So let me -- let me ask you something -- or let

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1 me give you some information that may help you
2 focus. You understand that the Complaint that
3 you filed is against the Board of Appeals and
4 Ms. Newman, but that only one count of your
5 Complaint, specifically your zoning appeal
6 against the Zoning Board of Appeals' decision,
7 actually concerns my questioning here today and
8 that this -- the deposition will later move to
9 questions by Ms. Ecker concerning the other
10 counts in the Complaint that you have alleged
11 against the Town.
12 So by way of helping you focus --
13 A. Right.
14 Q. -- I'm specifically interested in your zoning
15 appeal, your appeal of the Board of Appeals'
16 decision.
17 A. Uh-huh.
18 Q. And there will be time for you to, at -- at
19 some point later, testify as to the treatment
20 that you believe that you've received from the
21 Town in other areas. Okay? And if that just
22 helps you to focus a little bit.
23 So right now, I'm really trying to focus on
24 how it is that Ms. Newman's modifications to

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1 her property and the Zoning Board of Appeals
2 upholding the building permit allowing those,
3 how has that affected your property or your
4 legal rights other than the -- the disparate
5 treatment that you're alleging? Take that out
6 of the equation altogether.

7 Is there any other impact?

8 A. There's been a financial impact. It's
9 depreciated the value of our property
10 immensely.

11 Q. Okay. Let me stop you right there. What's the
12 basis for your statement that it's depreciated
13 the value of your property?

14 A. Well, if the hou- -- if that property is built
15 upon, it's quite more valuable.

16 Q. Okay. So again, I'm -- I'm concerned that
17 we're -- we're confusing things. The va- --
18 you're saying that if your property is built
19 on, it's much more valuable?

20 A. Exactly.

21 Q. Okay.

22 A. Uh-huh.

23 Q. Are you alleging that the modifications made to
24 Ms. Newman under the building per- -- permit

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1 Q. You've spoken with your geologist --

2 A. Uh-huh.

3 Q. -- who is?

4 A. Peter Rosen.

5 Q. And you've spoken to him specifically about an
6 erosion problem resulting from the
7 modifications to Ms. Newman's property at 3
8 Yacht Club Road?

9 A. Yes.

10 Q. And what has he told you in that regard?

11 A. In that environment, she should have had the
12 house on pilings.

13 Q. Okay. Let me stop you there. I don't want to
14 go back through that. I understand.

15 A. Okay.

16 Q. I understand what you're thinking in that
17 regard. You've already given me that answer.
18 I'm specifically concerned with the impact to
19 the value, the dollar value, of your property.
20 Is Mr. Rosen a real estate appraiser?

21 A. No.

22 Q. Do you -- have you hired a real estate
23 appraiser?

24 A. No.

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1 have impacted the value of your property?

2 A. Has her enlarging her house impacted the value
3 of my property? Only that the elevation, her
4 having a full foundation -- a full basement;
5 the trees will cause erosion to my property.

6 Q. Okay. Well, I'm specifically asking you about
7 allegations of an impact to the value of your
8 property. Do you have any basis for your --
9 for believing that there will -- that there
10 will be an impact to the value of your property
11 as a result of the modifications made to the
12 structure at 3 --

13 A. Yes.

14 Q. -- Yacht Club Road? What is the basis for
15 that?

16 A. The erosion --

17 Q. I understand --

18 A. -- problem.

19 Q. -- that you believe that there may be an
20 erosion --

21 A. Right.

22 Q. -- problem. What is that based on?

23 A. Speaking with my geologist, we've spoken about
24 it.

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1 Q. Have you had your property appraised to
2 determine whether there has been a before and
3 after impact to the value of your property from
4 1998 to the present?

5 A. No.

6 Q. Do you intend to hire an appraiser?

7 A. I have not discussed that, made plans for it.

8 Q. You have not made plans --

9 A. No.

10 Q. -- for hiring an appraiser? Okay. Have you
11 spoken --

12 A. For -- for -- for this part. For your part.
13 Right?

14 Q. Specifically -- yes. Specifically as pertains
15 to --

16 A. To you.

17 Q. -- an impact in the -- to the value of your
18 property from Ms. --

19 A. From hers.

20 Q. -- Newman's modifications.

21 A. That's what I thought. For your part. Okay.

22 Q. Have you spoken to any other person or obtained
23 knowledge from anyone else concerning whether
24 there is an impact to the dollar value of your

53

1 property as a result of the modifications made
2 to Ms. Newman's structure at 3 Yacht Club Road?
3 A. I've spoken with Jim Mahala previously, DEP.
4 Q. Okay. Is Jim Mahala an appraiser?
5 A. No. He works at DEP.
6 Q. Okay. So he doesn't have any expertise in
7 appraising property?
8 A. No. But there's a risk of my house flooding.
9 Q. Okay. I understand that you -- you have
10 expressed concerns about the structure and
11 the -- the flood zone and your concerns about
12 erosion. I understand that. I'm specifically
13 targeting the impact to the property value.
14 Okay.
15 What other impacts to your property rights
16 or legal interest are you claiming have
17 resulted from the Board of Appeals' decision
18 upholding the building inspector's issuance of
19 a building permit for the modifications to the
20 structure at 3 Yacht Club Road?
21 A. I think I covered ev- -- mo- -- there may be
22 more, but I think I covered most of them. The
23 on- -- there's only one more regarding her --
24 about her mooring.

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1 Q. Okay. Is the mooring connected to the building
2 permit for the structure -- modifications to
3 the structure at 3 Yacht Club Road? In other
4 words, the building commissioner didn't
5 issue --
6 A. No.
7 Q. -- Ms. Newman --
8 A. No.
9 Q. -- a mooring.
10 A. No.
11 Q. Correct?
12 A. Nobody did.
13 MR. REVERE: Can we go off the record for a
14 second?
15 MS. BARRY: Uh-huh.
16 (A brief discussion was held off the
17 record.)
18 MS. ECKER: Why don't we take a quick
19 break.
20 MS. BARRY: Okay.
21 (Brief recess taken.)
22 BY MS. BARRY:
23 Q. Ms. Cordi-Allen, can you -- have you told me
24 all of your claims as to how your property

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1 rights or legal interests have been harmed by
2 the Board of Appeals' decision upholding the
3 issuance of a building permit to Ms. Newman to
4 modify the residence at 3 Yacht Club Road?
5 A. Are you waiting? Are you just waiting for me
6 to say something?
7 Q. I'm waiting for you to answer the question.
8 A. Oh. I -- I thought you were just summarizing.
9 Q. No.
10 MS. BARRY: Would you read the question
11 back, please.
12 (Portion of question read back.)
13 A. There may be more. But to the -- right now,
14 that's the most I can recall.
15 Q. Okay. Have you told me all of your objections
16 to the Board of Appeals' decision upholding the
17 building permit issued to Brooke Newman for the
18 modifications to the structure at 3 Yacht Club
19 Road?
20 A. I don't think we discussed everything.
21 Q. I need -- this is as much for your benefit and
22 convenience more than mine. But this
23 deposition is the time for you to state for the
24 record what those objections are and what your

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1 allegations are concerning any harm to your
2 legal or property interest as a result of the
3 Board of Appeals' decision. So take a moment
4 to think about it if you wish. But I need to
5 know at this time.
6 A. At this time, I believe the Board of Appeals
7 dragged out -- well, it was dragged out by --
8 town officials did not send in a response to my
9 attorney in a timely manner so that the Board
10 of Appeals -- I believe it was them that said
11 it wasn't -- that my attorney didn't file in
12 the right time frame, whereas, since he did, it
13 was the Town that intentionally dragged it out
14 so that a date would be missed that they
15 arbitrarily picked.
16 And it wasn't necessarily -- their decision
17 is not necessarily true. It's what they want
18 people to believe as -- in reference to the
19 time frame. I understand there's a dispute as
20 to if it was when she applied versus when she
21 started building. But our paperwork was filed.
22 It was Truro that dragged it out. But . . .
23 Q. Do you understand that the Board of Appeals'
24 decision is upholding the building inspector --

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1 inspector's decision regarding your request
2 that the building permit issued to Ms. Newman
3 be revoked?

4 A. Yes.

5 Q. Okay. And do you understand that the Board of
6 Appeals upheld the building inspector's
7 decision that the building permit issued to
8 Ms. Newman was lawfully issued and that he
9 declined your request --

10 A. Because of --

11 Q. -- to revoke it?

12 A. I believe that was because of the time frame.

13 Q. Is that your only -- is -- do you believe
14 that's the only reason why he upheld the
15 building permit was because of alleged
16 statut- -- missing of a statutory deadline for
17 filing an appeal?

18 A. Again, there are issues with different
19 standards for different people. And the
20 standards of getting appropriate permits or
21 approvals through various boards is
22 inconsistent with the way people are treated in
23 Truro. And the documents are -- obviously, are
24 not lined up where they should be. And that's

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1 "Mr. Williams was acting within his
2 authority under the bylaw and, therefore, the
3 permit was issued lawfully."

4 Q. Okay. It doesn't indicate in those last two
5 paragraphs or, indeed, the letter, if you want
6 to read it, that you had -- that your filing
7 was -- or request for enforcement was late,
8 does it?

9 A. Not in this specific letter.

10 Q. Okay. Thank you. What letter are you
11 remembering that that --

12 A. It was discussions that my attorney and I had
13 spoken about.

14 Q. Okay. And I don't --

15 A. And I --

16 Q. Stop. I don't want to know any --

17 A. Right.

18 Q. -- communications between you and your counsel.

19 A. Well, that's what I was going to say.

20 Q. Okay.

21 A. I don't think I can say anything.

22 Q. Okay. All right.

23 A. But I think there were letters. I don't know.

24 Q. Okay. Have you told me today all of your

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1 why we have a case.

2 MS. BARRY: Can you mark that as the next
3 exhibit.

4 (Letter to Paul Revere from Thomas J.
5 Wingard Jr. dated 10/19/04 marked as
6 Cordi-Allen Exhibit No. 6.)

7 Q. I'm going to hand you what's been marked as
8 Exhibit 6 and ask if you can look at it and let
9 me know if you recognize it. Do you recognize
10 that?

11 A. No.

12 Q. Okay. I can represent to you that Exhibit 6 is
13 a letter from the building commissioner to your
14 attorney regarding the request for enforcement
15 and a revocation of Ms. Newman's building
16 permit. And I would direct your attention to
17 the last two paragraphs of that letter and ask
18 if you would read those for the record, please.

19 A. "Mr. Williams determined, as is deduced by the
20 issuance of the building permit, that
21 Ms. Newman's proposal was not 'substantially
22 more detrimental to its neighborhood' and 'will
23 not increase the nature or extent of the
24 nonconformity.'

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1 concerns or objections to the Board of Appeals'
2 decision concerning the building permit and its
3 upholding the building permit issued to
4 Ms. Newman for the modifications to the
5 structure of 3 Yacht Club Road?

6 A. Yeah. No. No. I haven't.

7 Q. Okay.

8 A. I have --

9 Q. What other concerns do you have --

10 A. Mr. --

11 Q. -- or objections?

12 A. I have concerns regarding Mr. Williams issuing
13 building permits to Ms. Newman and his
14 qualifications. And --

15 Q. Okay. And Mr. Williams is who?

16 A. He was the building inspector at the time.

17 Q. Okay. And can you relate for me, please, how
18 those objections about Mr. Williams'
19 qualifications are related to the decision of
20 the Board of Appeals upholding the issuance of
21 a building permit to Ms. Newman?

22 A. Mr. Williams has proven that he's very lax in
23 terms of his doing his job, specifically in
24 buying our property. He approved our septic

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1 system, signed off on it that it was done and
2 la-da-da. It was never done. And we went to
3 closing, and we had it tested or inspected.
4 There was no pump; there was no electricity.
5 Yet it was approved.

6 So I can't say that I res- -- I can -- I
7 can't say that he operates within the
8 regulations. And I think he was booted out by
9 the Town because of problems with the Town.
10 And I think he and Ms. Newman were personal
11 friends, from what I've been told.

12 Q. Who told you that Mr. Williams and Ms. Newman
13 were personal --

14 A. Various town- --

15 Q. -- friends?

16 A. Various townspeople.

17 Q. Uh-huh. Can you tell me who they are?

18 A. No. I can't. I -- you know, just people
19 talking.

20 Q. Can you tell me where they said that?

21 A. No. I don't remember.

22 Q. Can you tell me when they said that?

23 A. Over the years. I mean, people say things; and
24 you just hear things here and there. And I'm

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1 Q. Who is that?

2 A. Oh, gosh. The last name is, it's Mr. Kelly.
3 And I believe, Felco Engineering; they were
4 concerned, you know, why we're going through
5 all that we're going through.

6 Q. Okay.

7 A. And --

8 Q. Again, I want to redirect your --

9 A. Uh-huh.

10 Q. -- attention back to the Complaint concerning
11 the Board of Appeals' decision concerning the
12 building permit -- upholding of the building
13 permit issued to Ms. Newman and not concerning
14 your property. Do you have any other
15 objections to that decision by the Board of
16 Appeals upholding the building permit?

17 A. I don't feel that they're treating us equally.
18 And I don't feel that they are following
19 Truro's regulations the way they should be, as
20 well as the State's requirements.

21 Q. What State requirements are you --

22 A. DEP.

23 Q. I'm confused. Are you saying that DEP is
24 treating you differently?

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1 like, Hm.

2 Q. Can you tell me what the context was of the
3 conversation in which this would have -- this
4 topic would have come up as to the friendship
5 between or alleged friendship between
6 Ms. Newman and Mr. Williams?

7 A. I know people in town were concerned on how she
8 built, the way she built and got her permits
9 rather quickly; and we're struggling getting
10 ours. And not everybody in Truro is pleased
11 with the way that they're treating us. In
12 fact, people throughout the state wonder what's
13 going on, you know.

14 Q. Who are the people throughout the state that
15 you're referring to?

16 A. People that go down there. They'll say, How
17 did they build, and you can't build? And how
18 did they get this, and you can't? Even people
19 who have done work in prepar- -- that have
20 worked on Brooke Newman's house as well as
21 ours.

22 Q. Who are you speaking of specifically?

23 A. The man that drew up the plans for her house as
24 well as for our proposed house.

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1 A. No. The -- yeah. Well, DEP is. Yes. They
2 are, definitely. But what I'm saying is that
3 she had regulations that she had to have in
4 place to meet DEP regulations, and she did
5 not --

6 Q. Okay.

7 A. -- either, through --

8 Q. So this is --

9 A. -- Conservation.

10 Q. -- going back to the objections that --

11 A. But all of that --

12 Q. -- you've told me about.

13 A. -- would have been part of the appeals.

14 Q. Okay.

15 A. Yes.

16 Q. Let me ask you -- I just need to remind you
17 that we want to not talk over one another,
18 'cause her fingers are going to fall off. So
19 you're -- the -- you're -- what you're
20 referring to in your last answer was the
21 objections you've discussed previously in
22 today's deposition concerning Conservation
23 Commission approvals and DEP approvals --

24 A. Right.

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1 Q. -- is that correct? And have you told me
2 everything today about how the decision of the
3 Board of Appeals upholding Ms. Newman's
4 building permit to modify the structure at 3
5 Yacht Club Road impacts your property rights or
6 your legal interests?
7 A. I think it's basically in conclusion. If they
8 could approve hers, then the -- there's
9 absolutely no reason that we shouldn't have
10 built in 1997.
11 Q. Okay.
12 A. And I don't know if this is part of it. But
13 you mentioned views. And I understand that
14 from DEP that views cannot be part of this.
15 Yet when she bought the property after we
16 did -- we were the original owners down
17 there -- she was told that we were building; we
18 had plans on building.
19 And she was also told -- and she made plans
20 for her -- the location of her house, knowing
21 we were building. And that was through the man
22 that designed her house. He told us that. He
23 told me that.
24 Q. And she made plans for the no- -- location.

66

1 When you say "she made plans for the location,"
2 are you talking about the change in the
3 location, the turning of the --
4 A. Yes.
5 Q. -- building?
6 A. Exactly.
7 Q. And it was her plan to orient the house away
8 from your structure?
9 A. No. I wouldn't say that.
10 Q. How would you --
11 A. Just to --
12 Q. -- describe it?
13 A. -- see -- to see about views. I think there
14 was lo- -- you know, located. I don't know
15 how --
16 Q. Views from?
17 A. -- it was specifically, you know. But she just
18 knew that her view was not going to be what it
19 is when she bought the property. So she moved
20 the house.
21 Q. I understand. So her view would be
22 obstructed --
23 A. Right.
24 Q. -- by your proposed dwelling --

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1 A. Exactly.
2 Q. -- and the modifications and the new structure
3 that you wanted to develop on your property?
4 A. Exactly.
5 Q. And so, as -- as you understand it from the
6 person who designed her building --
7 A. Right.
8 Q. -- she re-oriented the --
9 A. And -- and Felco also.
10 Q. That she -- let me finish -- re-oriented the
11 location of her building --
12 A. Right.
13 Q. -- so that her property -- the view from her
14 property would not be impacted as a result of
15 the proposed structure to be developed on your
16 property. Right?
17 A. That there would be the possibility of her
18 getting a view.
19 Q. Okay.
20 A. I mean, it's not going to be the same view.
21 Q. Okay.
22 A. We know that. A full view.
23 Q. And how does that impact your property rights
24 or your legal interest that Ms. Newman wanted

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1 to turn the structure so that she would still
2 have a view in the event that your property was
3 allowed to be developed as you proposed?
4 A. Well, obviously, this is all about views. And
5 views cannot be part of . . .
6 Q. Well, we're not talking a- -- no. I'm
7 talking --
8 A. So that's my legal right. She's bringing a
9 lawsuit and trying to stop us from building
10 because of her view.
11 Q. Okay. But we're talking about the lawsuit here
12 today. And what I'm trying -- I'm trying to
13 determine from your answers what impacts you're
14 claiming to your property as a result of the
15 Board of Appeals' decision.
16 If I understand correctly, you have just
17 testified that Ms. Newman wanted to change the
18 orientation of her structure because she was
19 concerned that your proposed expansion and new
20 development at your property would obstruct her
21 view; is that correct?
22 A. Yes.
23 Q. Is that what you've just testified?
24 A. Uh-huh.

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1 Q. Okay. So how would her wanting to orient her
2 structure so that she might still have a view,
3 assuming your structure were allowed, how does
4 that impact your property rights or your legal
5 interest?
6 A. She is objecting to us building to protect her
7 views.
8 Q. I understand that that's your position.
9 MS. REVERE: All right. But she's asking
10 you, what about the building permit hurt your
11 property? That's all you need to care about.
12 Is that -- that a fair --
13 MS. BARRY: Yes.
14 A. Yeah. Still don't -- we don't have a building
15 permit.
16 Q. No. Ms. Newman's building permit, how did
17 that --
18 MR. REVERE: What about --
19 Q. -- impact you?
20 MR. REVERE: -- the building permit?
21 Q. What I'm saying is, if -- if she turned her
22 house --
23 A. Right.
24 Q. -- from where it was, how does that impact your

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1 property?
2 A. Only if she's met proper setbacks and
3 elevations and all that.
4 Q. Okay. But it doesn't specifically impact your
5 property in particular. Correct?
6 A. The foundation, et cetera, that we've already
7 talked about, from what I've been told, will
8 affect our property.
9 Q. Oh, you're referring now --
10 A. From D- -- DEP has said that also.
11 Q. Okay.
12 A. Actually, Brooke Newman's even said that.
13 Q. Okay. So you're referring now to the erosion
14 issue?
15 A. Exactly.
16 Q. Okay.
17 A. Uh-huh.
18 Q. But other than the erosion issue, is there any
19 other impact from the turning of her house to
20 your property?
21 A. Not that I could think of right now.
22 Q. Okay. You mentioned earlier about a trespass.
23 A. Uh-huh.
24 Q. And is it correct that you filed notice of

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1 trespass against Ms. Newman last summer?
2 A. Yes. I did.
3 Q. And what was that in connection with?
4 A. Taking my barrels, my trash.
5 Q. Okay. Can you elaborate a bit? Because I'm --
6 I'm not familiar with your property. And so I
7 don't really understand what you're talking
8 about.
9 A. She was moving my barrels, removing them,
10 moving them. We'd find them -- once, somebody
11 brought my husband over to the woods by the
12 yacht club and said, Is this your barrel? And
13 we got told -- we were told by people staying
14 at our house that the barrels were being moved,
15 and she was moving them. And we were told by
16 the trash removal people as well. And not only
17 that, she's walking on our property; and it's
18 private property.
19 Q. What is your basis for --
20 A. We've seen her.
21 Q. -- saying that she's walking on your property?
22 A. We've seen her.
23 Q. And where specifically on your property is she
24 walking?

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1 A. From her house, to get to the water.
2 Q. Can you show me on this Exhibit 5 -- and you
3 can use this pen, please, to draw where
4 Ms. Newman is allegedly walking over your
5 property.
6 A. You can see it right here, the path. The --
7 our property goes in front of here; it goes out
8 this way --
9 Q. Uh-huh.
10 A. -- and then down.
11 Q. Uh-huh.
12 A. And she's cutting through.
13 Q. So you're alleging that this path right here --
14 this line -- thin --
15 A. Uh-huh.
16 Q. -- thin line here --
17 A. Yes.
18 Q. -- down to the beach is where Ms. Newman is
19 walking --
20 A. Yes.
21 Q. -- to --
22 A. Uh-huh. Well, it's not -- yes. Yes. The
23 house is moved. Or is this the addition now?
24 Q. I don't know. It's your document.

73

1 A. What's the date on this?
 2 Q. I don't believe there is one.
 3 A. It's here.
 4 Q. Oh.
 5 A. '90. But it's cut off. I think that was
 6 before --
 7 Q. Okay.
 8 A. -- I think. So -- but, still, there -- she's
 9 walking to -- on the path. You could see the
 10 path. She's also planting trees on our
 11 property --
 12 Q. Okay.
 13 A. -- down here.
 14 Q. Let me just -- let me just redirect you now.
 15 A. Okay.
 16 Q. Are you, when -- I'm still talking about the
 17 trespassing notice that you filed.
 18 A. That's trespassing when you're planting on --
 19 Q. I understand. I'm just trying to determine the
 20 notice of trespass that you filed against
 21 Ms. --
 22 A. Right.
 23 Q. -- Newman last year. So right now, that was
 24 based on her alleged moving of trash barrels --

75

1 or so -- so feet somewhere around here.
 2 Q. Ms. Newman --
 3 A. She has --
 4 Q. -- has some --
 5 A. Yeah.
 6 Q. -- some property on the beach?
 7 A. Yeah.
 8 Q. Okay.
 9 A. But we have 172-feet frontage; and she has just
 10 maybe 25, 30 feet. I don't -- it's small --
 11 Q. Okay.
 12 A. -- in comparison to ours. And there are trees
 13 all -- evergreens that are being planted and
 14 dying and on our property, and they're not
 15 mine.
 16 Q. Okay. Is there any other basis for your
 17 trespassing complaint against Ms. Newman that
 18 was filed last summer?
 19 A. Those are the three.
 20 Q. Okay. You've asserted in your answers to the
 21 Town's interrogatories that Mrs. -- Ms. Newman
 22 is Jewish. What's the basis for your
 23 understanding or belief that Ms. Newman is
 24 Jewish?

74

1 A. Trash barrels.
 2 Q. -- her --
 3 A. She's walking on our property.
 4 Q. Right. Let me just summarize for you. This'll
 5 make it easier. She's cross- -- you're
 6 alleging she's crossing over your property to
 7 reach the beach and has planted trees on your
 8 property?
 9 A. Yes.
 10 Q. Okay. Can you draw a line for me that,
 11 roughly, approximates where your property line
 12 goes to on Exhibit 5?
 13 A. Oh, okay. It's something like this.
 14 Q. Okay. Is that -- marking your pen might be
 15 better, actually.
 16 A. I don't -- as I say, I --
 17 Q. Here's -- let me --
 18 A. You don't have the plot plan?
 19 Q. I'm sure that I do at some point.
 20 A. Okay.
 21 Q. But I'm just interested in where you believe
 22 your property line is.
 23 A. It goes in front of here. So -- and then it
 24 angles down. And then, I think she has like 25

76

1 A. We were told that.
 2 Q. By who?
 3 A. Townspeople.
 4 Q. Can you be more specific?
 5 A. Just, we know a lot of people in the town.
 6 People are talking.
 7 Q. Uh-huh.
 8 A. People that are staying at our house.
 9 Q. How would people staying at your house know
 10 whether Ms. Newman is Jewish?
 11 A. Talking with her. Actually, even our -- the
 12 kids were talking. Her son met my daughter at
 13 the beach. I know they were hanging out, as
 14 the kids say. Even my -- my previous lawyer
 15 had said something about it.
 16 Q. Your previous lawyer --
 17 A. Uh-huh.
 18 Q. -- being?
 19 A. Bill Henchy.
 20 Q. Do you rent your house in the summers?
 21 A. Yes. Somewhat.
 22 Q. Did you rent it last summer?
 23 A. Part of the summer.
 24 Q. What about the summer of 2004?

77

1 A. Yes. Part of it.
2 Q. What about the summer of 2003?
3 A. Yes. Uh-huh.
4 Q. What about the summer of 2002?
5 A. Yes.
6 Q. What about the summer of 2001?
7 A. Yes.
8 Q. What about the summer of 2000, did you rent
9 your house then?
10 A. 2000. I believe so.
11 Q. And what about the summer of 1999?
12 A. I-- that's going back too far. I may have,
13 for, you know -- I mean, we use it somewhat.
14 I'm disabled. I can't be alone. So I don't
15 stay there that much now --
16 Q. When did --
17 A. -- alone.
18 Q. -- you purchase your house?
19 A. '96.
20 Q. Is it fair to say that you've rented the
21 property during the summer for -- for part or
22 all of the summer for most of the time since
23 you've owned the property?
24 A. In the summer?

78

1 Q. Yeah.
2 A. Yeah.
3 Q. Yes.
4 A. Yes.
5 Q. Ms. Cordi-Allen, I can represent to you that
6 you did not file an appeal to the Board of
7 Appeals in 1998 when the building permit was
8 issued to Ms. Newman to make the modifications
9 to her property. Why didn't you appeal in
10 1998?
11 A. That was -- my attorney, Bill Thomas, was
12 handling it then. I --
13 Q. Okay. I just --
14 A. I don't -- he's gone. I -- he's passed away.
15 So you'd have a -- I don't know what or why he
16 did or didn't do what he did do.
17 Q. Why did you file the appeal of the building
18 permit issued to Ms. Newman and the Board --
19 strike that. Why did you file the Board of
20 Appeals' decision upholding Ms. Newman's permit
21 in 2004?
22 A. Because there were inconsistencies we found.
23 Q. Is it fair to say you filed the appeal of
24 Ms. Newman's building permit, sought

79

1 enforcement of that building permit, requested
2 that the building permit be rescinded, and then
3 appealed the Board of Appeals' decision because
4 Ms. Newman had appealed the variances that were
5 granted to you by DEP?
6 A. I would say that it was because we were being
7 told we had to have certain things done, and it
8 was okay for her to do things a different way.
9 And there was no consistency in the way we were
10 being treated.
11 Q. And how far back has that inconsistent
12 treatment been going on, are you claiming?
13 A. Well, it's obvious from Conser- -- when she
14 went to Conservation Commission or Board of
15 Health or whatever. Like I said, she has --
16 now she put in her third well; and she's
17 complaining about, if we build, we're going to
18 use more water. Our well's no- -- nowhere near
19 her well, but she's had three wells that have
20 failed within the past few years.
21 Q. Okay.
22 A. And . . .
23 Q. So it's fair to say that you're claiming that
24 you've received inconsistent treatment since,

80

1 at least, 1998?
2 A. Yes.
3 MS. BARRY: Okay. Let me just look through
4 my notes quickly, and I think I'm done. All
5 right. At this point, I'm going to suspend
6 Ms. Cordi-Allen's deposition pending receipt of
7 the few things that I requested earlier
8 concerning what was done to search e-mail and
9 as well as a designation of the documents that
10 were produced so that I can have an
11 understanding of what documents are responsive
12 to each particular document request.
13 And I would also request and reiterate the
14 request in the request for production of
15 documents that a privilege log be produced. I
16 understand that certain documents have not been
17 produced claiming a privilege. And I think
18 it's quite clear that a privilege log is
19 allowed -- under the Federal Rules of Civil
20 Procedure that a request for a privilege log is
21 allowed. And I would request that that be
22 produced as well.
23 I don't know if anybody else has any
24 questions.

81

1 MS. ECKER: Nothing. Let's go off the
2 record.
3 (A brief discussion was held off the
4 record.)
5 CROSS-EXAMINATION
6 BY MS. ECKER:
7 Q. Good afternoon, Ms. Cordi-Allen. My name is
8 Deborah Ecker, and I represent the Town and the
9 Town defendants in this case that you've
10 brought. Just to go over a little bit some of
11 your background, you had testified that you and
12 your husband currently live in Springfield,
13 Massachusetts?
14 A. No. Longmeadow.
15 Q. Longmeadow. Being from the east, it's all the
16 same. And you've lived there for six years.
17 Correct?
18 A. At this house. Yes.
19 Q. At this house.
20 A. Yeah.
21 Q. Have you had any work performed on the house
22 that you currently reside in?
23 A. Fixed up the bathroom.
24 Q. Was there a need to get any permits from the

83

1 A. Gosh. '86 to 2000. Fourteen years.
2 Q. And during the period of time that you lived at
3 that prior residence, did you have to obtain
4 any type of permits from the Town of Longmeadow
5 to perform any type of work to your property?
6 A. I believe so. Yeah.
7 Q. What permits did you have to obtain?
8 A. In order to put a skylight in the family room.
9 Q. Anything else?
10 A. I think that was it.
11 Q. Other than those two properties in Longmeadow
12 and the property that we're here to discuss
13 today, have you or your husband owned any other
14 properties?
15 A. We've owned like an -- in Truro, Town Hall
16 Road.
17 Q. And what -- what address do you -- what other
18 property --
19 A. It's Lot --
20 Q. Do you have any -- let me just fini- -- what
21 other property did you own in Truro?
22 A. Okay. Town -- on Town Hall Road, it was Lot 2.
23 Now it's called 10. Now they put a number on
24 it.

82

1 Town of Longmeadow in order to do any --
2 A. Yeah.
3 Q. -- work --
4 A. Uh-huh.
5 Q. Let me just finish.
6 A. Oh.
7 Q. I -- I -- I know it's really difficult, but I
8 have to finish --
9 A. Okay.
10 Q. -- my question. Was there a need for you to
11 get any permits from the Town of Longmeadow in
12 order to perform renovation work on your
13 current residence?
14 A. Yes.
15 Q. Okay. What permits were required?
16 A. An electrical and plumbing permit.
17 Q. Did you have any difficulty getting those --
18 A. No.
19 Q. -- permits? Prior to your living at your
20 current residence, where were you residing?
21 A. In Longmeadow.
22 Q. Okay. And what was your address?
23 A. 146 Pleasantview Avenue.
24 Q. How long did you live at that property?

84

1 Q. Do you still own that property?
2 A. Yes.
3 Q. When did you purchase that property?
4 A. In 1985.
5 Q. Is there a structure on that property?
6 A. Yes.
7 Q. Have you done any renovation work to the
8 property that is now -- I'm sorry -- 10 Town
9 Hall Road?
10 A. Yes. A deck.
11 Q. Did you have to obtain any type of permit from
12 the Town of Truro in order to perform the
13 renovation work at the 10 Town Hall Road
14 property?
15 A. I believe that he pulled a permit for the deck.
16 Q. And when you say "he," who do you mean?
17 A. The guy doing it.
18 Q. The guy, what --
19 A. The contractor.
20 Q. Okay. And that would be the contractor working
21 in your behalf?
22 A. Yeah. Uh-huh. I believe -- I -- I think he's
23 the one that did it. Or maybe my husb- -- I
24 don't really -- it was so long ago, I don't

85

1 really remember. But I -- I'm pretty sure that
2 they pulled one. But I can't say who pulled
3 it.
4 Q. And the Town of Truro issued a permit to you
5 for the renovation work or the deck work --
6 A. Right.
7 Q. -- at -- I have to finish my question -- at 10
8 Hall (sic) Road in Truro?
9 A. Yes.
10 Q. Do you know who the building inspector was at
11 the time that that permit was issued?
12 A. I think it was C. Williams.
13 Q. Did you have any difficulty obtaining a permit
14 from Mr. Williams or anyone in the Town of
15 Truro in order to perform the deck work at the
16 10 Hall Street -- Town Hall Street -- Road
17 property?
18 A. No, not that I recall. I don't -- I don't
19 think so.
20 Q. Any other properties that you and your husband
21 have owned other than the two in Longmeadow and
22 the two properties in Truro?
23 A. When we first got married, we owned a house on
24 Sheffield Avenue in Longmeadow.

86

1 Q. How long did you own that property?
2 A. I think we bought it in -- I forget what
3 year -- '79.
4 Q. Did you perform any renovation on that first
5 property that required your obtaining any
6 permits from --
7 A. Permit.
8 Q. -- the Town of Longmeadow?
9 A. I don't think so. I -- that was so long ago, I
10 don't really remember.
11 Q. For the -- your property located at 10 Town
12 Hall Road in --
13 A. Right.
14 Q. -- Truro, have you filed applications for any
15 permits with the Town of Truro that have not
16 been granted for that specific property?
17 A. We were going to maybe put a garage on the
18 property, and we haven't gone anywhere with
19 that yet. We started a process, but we haven't
20 finished it.
21 Q. When you say you started the process, did
22 you -- anything in the process that you started
23 involving the Town?
24 A. Yes.

87

1 Q. Okay. And what was that? What was the town
2 involvement?
3 A. I think we -- we had the plans drawn up to put
4 on the property. And they said for us to
5 locate it where it was going to be. And then
6 they got more and more -- first, they told us
7 one thing. And then it was, you know, no; now
8 you better -- they didn't want the drawing the
9 way it was; they wanted it a different way.
10 And we prioritized, and we're focusing in now
11 on this. And I don't know that we're going to
12 keep the other property.
13 Q. Can you --
14 A. I'm not sure what we're doing. So we -- we
15 haven't finished building the garage or --
16 that's like on hold.
17 Q. When you say they told you they wanted the
18 drawing another way, who is "they"?
19 A. Building inspector.
20 Q. And who was the building inspector who told you
21 that?
22 A. I don't know his name. They -- he's there now.
23 Tom some- -- I think. I don't know his last
24 name.

88

1 Q. Okay. And is that recently that he told you he
2 needed to have the --
3 A. Maybe --
4 Q. -- drawings -- I have to finish.
5 A. Oh.
6 Q. Sorry. I know it's tough, but it's hard --
7 it's hard for the stenographer. Is that
8 recently that the build- -- current building
9 inspector told you that you needed to revise
10 the drawings for the garage?
11 A. Maybe two years ago.
12 Q. And since he told you to make revisions, you
13 haven't submitted anything else to --
14 A. No.
15 Q. -- the Town? And that project's on hold?
16 A. Right.
17 Q. You testified earlier that you have a lawsuit
18 that is currently pending in Federal Court
19 other than the one that we're here to discuss
20 today. Correct?
21 A. Yes.
22 Q. What -- and you're the plaintiff in that
23 lawsuit?
24 A. Yes.

89

1 Q. Who is the defendant?
2 A. R. Bartley Halloran.
3 Q. I'm sorry?
4 A. R. Bartley Halloran.
5 Q. Okay. And who is R. Bartley Halloran?
6 A. He was the lawyer that I had for my leg.
7 Q. It's a legal malpractice suit that you filed
8 against him?
9 A. Breach of contract.
10 Q. And what are you alleging in that lawsuit, very
11 briefly?
12 A. It was discovered that he did not disclose that
13 he was working for my employer and United
14 Technologies at the same time that he was
15 representing me.
16 Q. What is the name of your employer?
17 A. It was the City of Hartford.
18 Q. What is the -- I'm sorry -- R.N. Technologies?
19 A. United Technologies.
20 Q. United Technologies. So he didn't disclose
21 that he was working for United Technologies?
22 A. Right.
23 Q. But your employer was the City of Springfield?
24 A. Hartford.

90

1 Q. Hartford. And that case is currently pending?
2 A. Yes.
3 Q. And is Mr. Revere --
4 A. Yes.
5 Q. -- the attorney -- I just have to finish --
6 A. I'm sorry.
7 Q. -- the attorney in --
8 A. Yes.
9 Q. -- that case? And is it filed in the Boston
10 District -- the Western District?
11 A. Yes.
12 MR. REVERE: It -- it was removed. It was
13 filed in the State Court. It was removed.
14 MS. ECKER: That's fine. I just -- I --
15 MR. REVERE: Okay. I just thought we'd --
16 since you said, where was it filed, I'm like,
17 you know what? It wasn't filed there. It was
18 removed.
19 MS. ECKER: Okay.
20 Q. Other than the lawsuit that's currently pending
21 and -- and the lawsuit we're here to discuss
22 today, have you been a party to any other
23 lawsuits, either plaintiff or defendant?
24 A. Oh, for my injury.

91

1 Q. And --
2 A. Again, it was United Technologies and the City
3 of Hartford. Well, actually, he didn't even
4 bring anything against the City of Hartford.
5 It was United Technologies.
6 Q. Okay. So you were a plaintiff in a lawsuit,
7 and the defendants were United Technologies?
8 A. Right. Delta Elevator, specifically.
9 Q. And when was that lawsuit filed?
10 A. When I got hurt, in '97.
11 Q. And has that lawsuit since been resolved?
12 A. Yes.
13 Q. Was it settled, or did it go to trial?
14 A. No. It -- we were told we had to settle it.
15 Q. Who told you you had to settle it?
16 A. Mr. Halloran.
17 Q. Okay. I don't want to know what your
18 attorney --
19 MR. REVERE: Yeah.
20 Q. -- said to you.
21 A. Yeah.
22 MR. REVERE: Those are matters of record in
23 that case. So I don't think that's a problem.
24 MS. ECKER: Okay.

92

1 MR. REVERE: Okay. I don't want to
2 interrupt. But you -- you've asked questions
3 about lawsuits. The Town of Truro -- and it's
4 mentioned in the Complaint -- and Brooke Newman
5 have other related lawsuits.
6 MS. ECKER: That's fine.
7 MR. REVERE: Okay.
8 MS. ECKER: I meant other than the ones
9 that --
10 MR. REVERE: Right. Okay.
11 MS. ECKER: -- refer --
12 MR. REVERE: Just make sure that's clear.
13 And I don't want Barbara to suddenly come back
14 and then --
15 MS. ECKER: Yeah. No. Thank you very
16 much. I appreciate that.
17 Q. Where was your lawsuit filed against United
18 Technologies? Was it in Massachus- --
19 MR. REVERE: Hartford.
20 Q. It was in Connecticut?
21 A. Uh-huh. Yes.
22 Q. Was it at the State Court in Connecticut?
23 A. I have no idea.
24 Q. And what were your allegations against United

93

1 Technologies in that lawsuit?

2 A. The elevator was malfunctioning and wasn't

3 operating properly. If . . .

4 Q. Okay. Why don't you tell me what happened

5 at -- at the time of the accident that was the

6 subject of that lawsuit filed in Hartford,

7 Connecticut.

8 A. I was crushed in the elevator shaft.

9 Q. And you were working at the time?

10 A. Yes.

11 Q. Was it in a building owned by your employer?

12 A. Yes.

13 Q. Did you receive workers' compensation?

14 A. Yes.

15 Q. Did you have to go to a hearing in order to

16 receive the workers' compensation?

17 A. Yes.

18 Q. Who was the workers' compensation insurance

19 carrier?

20 A. It was self-insured: City of Hartford.

21 Q. Do you recall how many hearings you had to go

22 to in order to receive workers' comp?

23 A. No.

24 Q. Okay. At some point in time, did you --

94

1 A. I think -- wait -- excuse me. I want --

2 MR. REVERE: You're straightening that out.

3 Because the City of Hartford was insured by --

4 THE WITNESS: No. They were not. They're

5 self-insured.

6 MR. REVERE: I thought they were insured by

7 Travelers.

8 THE WITNESS: No.

9 MR. REVERE: Okay.

10 THE WITNESS: No.

11 MR. REVERE: Sorry. I was about to -- I

12 didn't want --

13 MS. ECKER: That's fine.

14 MR. REVERE: -- you to go on and have that

15 come out later.

16 Q. At some point in time, did you receive a

17 lump-sum payment from --

18 A. No.

19 Q. Never. Okay. You stopped receiving workers'

20 compensation benefits --

21 A. Yes.

22 Q. -- at some point in time?

23 A. Yes.

24 Q. Okay. And when had you stopped receiving

95

1 workers' compensation benefits as a result --

2 A. I received them for one year --

3 Q. So --

4 A. -- about.

5 Q. So from '97 to '98?

6 A. Some- -- yes. About.

7 Q. And that was from the City of Hartford?

8 A. Yes. It was part of my contract.

9 Q. That you were to receive workers' compensation

10 benefits if you were injured?

11 A. Yes.

12 Q. And why did the payments cease in 1998? Were

13 you no longer disabled as a result of the

14 accident?

15 A. There was a third-party lawsuit against United

16 Technologies.

17 Q. So you filed a third-party lawsuit against

18 United Technologies?

19 A. Yes.

20 Q. And it's your understanding that that affected

21 the City of Hartford's paying you workers'

22 compensation benefits?

23 A. I don't know if I can say too much because

24 of -- of our suit.

96

1 MR. REVERE: Can -- can we go off the

2 record for a second?

3 (A brief discussion was held off the

4 record.)

5 Q. My -- my question's simple. At some point in

6 time, you stopped receiving workers's

7 compensation --

8 A. Yes.

9 Q. -- benefits. Correct?

10 MR. REVERE: Okay.

11 Q. And that was approximately one year after the

12 accident. Correct?

13 A. Yes.

14 Q. And at the time you stopped receiving workers'

15 compensation benefits, was there a decision by

16 the Workers' Compensation Board that you were

17 no longer disabled as a result --

18 A. No.

19 Q. -- of the accident?

20 A. Actually, it -- here's this -- the problem.

21 And it became quite obvious what was going on,

22 and Paul put together the pieces. It took

23 seven or eight years to get a hearing.

24 Q. And so is it your testimony that, during that

97

1 seven or eight years, you were not paid
 2 workers' --
 3 A. Right.
 4 Q. -- compensation --
 5 A. Exactly.
 6 Q. -- benefits; and you should have been?
 7 A. I wasn't granted a hearing even for se- -- for
 8 that length of time.
 9 Q. Okay. And why do you --
 10 A. Yeah. It was seven or eight years.
 11 Q. Okay. And you believe that -- why do you
 12 believe that the State of Connecticut who --
 13 didn't grant you a hearing for seven or eight
 14 years on your workers' compensation issues?
 15 A. Mr. Halloran was the one handling that. And he
 16 didn't -- he was supposed to be getting dates
 17 and things like that. And it was obvious that
 18 it was just being dragged out for whatever
 19 reasons. But he --
 20 Q. When he --
 21 A. -- was the one that made the de- -- that --
 22 that was supposed to get me in. And I kept
 23 asking him, When is the hearing? When is the
 24 hearing? When is the hearing? And it took

99

1 Q. So Travelers is a third-party administrator,
 2 correct, for the Town of Hartford?
 3 A. If that's what you call it. I don't . . .
 4 Q. At some point in time, did you receive a letter
 5 from Travelers telling you that your workers'
 6 compensation benefits had ceased?
 7 A. I don't remember. I may have.
 8 Q. At some point in time, did Travelers request
 9 that you be re-evaluated in order to receive
 10 additional workers' compensation benefits?
 11 A. I think, when I went for a formal hearing
 12 finally, I think I did then.
 13 Q. Okay. So is it your testimony that, prior to
 14 the seven or eight years after the accident
 15 when you got a hearing --
 16 A. Right.
 17 Q. -- in Connecticut for workers' compensation,
 18 Travelers had not asked you to go to any
 19 physician for evaluation to determine whether
 20 you were still disabled as a result of the
 21 accident?
 22 A. I remember going for the formal hearing for
 23 them.
 24 Q. And that was seven or eight years later?

98

1 seven years to have a hearing.
 2 Q. At the time that you stopped receiving workers'
 3 compensation benefits --
 4 A. Right.
 5 Q. -- as a result of your accident in 1997, did
 6 you receive a letter from the State of
 7 Connecticut Workers' Compensation Board or
 8 anyone telling you that your benefits had
 9 ceased?
 10 A. I believe you get rated for your injury, and
 11 then they pay you so many weeks. That's how
 12 Connecticut is. And at the end of those amount
 13 of weeks, then your benefits stop until you --
 14 unless you contest it or whatever you do, go to
 15 a -- a hearing.
 16 Q. Did anyone from either -- and you -- you
 17 believe that the City of Hartford's
 18 self-insured. Correct?
 19 A. I know it is.
 20 Q. Do they have a company that administers their
 21 workers' compensation --
 22 A. Travelers --
 23 Q. -- benefits?
 24 A. -- does.

100

1 A. Yeah. 'Cause I hadn't had a hearing with them
 2 for them to say anything.
 3 MR. REVERE: Look, Barb, you have to focus
 4 on the question. She asked you, did
 5 Travelers -- or in the workers's compensation
 6 process, were you required to go to physicians?
 7 A. I did, for the formal hearing, when it -- once
 8 it started. But that was like seven or so
 9 years ago.
 10 Q. And never before that time?
 11 A. No, not that I recall.
 12 Q. When your workers' compensation benefits ceased
 13 after the year, did you provide Travelers or
 14 anybody with notes from your physician that you
 15 continued to be disabled?
 16 A. I didn't. I don't know what my lawyer did.
 17 Q. At the time of the accident in 1997 --
 18 A. Yeah.
 19 Q. -- what was your injury?
 20 A. My left foot was totally crushed. The top of
 21 my foot now is at the bottom. It's dropped.
 22 And my whole left side is in severe, severe
 23 pain. I have RSD. My back was injured and my
 24 cervical disk.

101

1 Q. And that's all -- all those things you just
2 told me are a result of the 1997 --
3 A. Yes.
4 Q. -- accident? And did you have any surgery as a
5 result of the 1997 --
6 A. Yes.
7 Q. I just have to finish my question; I know it's
8 hard -- as a result of the 1997 accident?
9 A. Yes.
10 Q. What surgery did you have performed?
11 A. Total reconstruction of my foot.
12 Q. Any other surgery?
13 A. I had 11 pins and wires removed at various
14 times.
15 Q. And -- okay. When --
16 A. Total of three.
17 Q. When's the last time you've had surgery as a
18 result of the 1997 accident?
19 A. In 1997.
20 Q. And when you got your hearing finally in '97 --
21 seven or eight years after --
22 A. Right.
23 Q. -- your workers' compensation benefits ceased,
24 what was the decision of the Board regarding

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1 percentage of -- that they found that you were
2 disabled, if at all?
3 A. Oh, no. That wasn't then. Initially, they
4 said I was, I think, 50 percent.
5 Q. Okay. And when the new decision came out --
6 initially, when you first were injured.
7 Correct?
8 A. Right.
9 Q. Okay. When you were first injured in '97, they
10 found that you were 50-percent disabled?
11 A. Right.
12 Q. Okay. At some point in time, there was a
13 hearing --
14 A. Right.
15 Q. -- seven or eight years later.
16 A. Uh-huh.
17 Q. Correct?
18 A. Uh-huh. Yes.
19 Q. What was the finding of the Board?
20 A. That I wasn't totally and permanently disabled.
21 Q. Did they give you any percentage?
22 A. No.
23 Q. Did they determine that you could work at all?
24 A. Maybe.

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1 your benefits?
2 A. That I wasn't totally, permanently disabled.
3 Q. Did the Connecticut Workers' Compensation
4 Board -- and I don't know the formal name of
5 it --
6 MR. REVERE: I think you're right.
7 A. That's what --
8 Q. -- Connecticut Worker's Compensation Board, did
9 they find that you had any type of disability
10 seven or eight years later when they issued
11 their decision?
12 A. Yes.
13 Q. Okay. And what did they find?
14 A. Can you repeat that?
15 Q. When the Connecticut Workers' Comp- -- after
16 the hearing held by the Connecticut Workers'
17 Compensation --
18 A. Right.
19 Q. -- Board to determine whether you were still
20 disabled and should be receiving workers'
21 compensation benefits, a decision was issued.
22 Correct?
23 A. Yes.
24 Q. And, in that decision, do you recall the

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1 Q. You just don't recall?
2 MR. REVERE: We --
3 A. I --
4 MR. REVERE: We can get you a copy of --
5 MS. ECKER: Okay.
6 MR. REVERE: -- the decision.
7 MS. ECKER: That would be --
8 MR. REVERE: Yeah. I was letting you ask
9 'cause that might be a reason. But if it's
10 beyond that, we can give you a copy of it. And
11 the decision found that she had working --
12 THE WITNESS: Like --
13 MR. REVERE: It -- let's go off --
14 MS. ECKER: Well, just get me --
15 MR. REVERE: -- the record.
16 MS. ECKER: -- a cop- -- forget it.
17 Just --
18 MR. REVERE: Let's go off --
19 MS. ECKER: -- get -- no, no, no. Just get
20 me --
21 MR. REVERE: We'll get you --
22 MS. ECKER: -- a copy.
23 MR. REVERE: -- a copy.
24 MS. ECKER: I want to move on. Let me --

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1 just get me a copy.
2 MR. REVERE: I'll -- I'll explain workers'
3 comp a little and how it went when we're --
4 MS. ECKER: That's fine.
5 MR. REVERE: -- we take a break.
6 MS. ECKER: That's fine.
7 Q. What was your job for the City of Hartford?
8 A. I taught.
9 Q. Okay. Oh, you were a schoolteacher?
10 A. Yeah.
11 Q. What grade did you teach?
12 A. It -- it varied. It was nine through twelve
13 though.
14 Q. After the accident, did you ever try to return
15 to work?
16 A. Did I try?
17 Q. Yes.
18 A. I was not able to work.
19 Q. Did anyone tell you that you were not able to
20 work?
21 A. Yes.
22 Q. Who told you that?
23 A. All of my doctors.
24 Q. Has anyone told you since 2000 that you're not

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1 able to teach as a result of the accident in
2 '97?
3 A. All of my doctors.
4 Q. Who are your doctors who have told you that?
5 A. Dr. Pierangelo, Dr. Kruger, Dr. Berson. I went
6 to the No. 1 doctor in the country for RSD
7 after the hearing.
8 Q. After the workers' compensation hearing?
9 A. Yes. And he said I definitely -- what
10 happened, in a nutshell, they sent me to a
11 doctor to see if I had RSD in my leg. He
12 looked at the X-rays on my back. My back is
13 not my leg.
14 Q. And when you say "he looked," who is that?
15 What doctor was that?
16 A. I don't know his name. He's on Bloom- -- on
17 Cottage Grove Avenue. That's all I remember.
18 Cottage Grove Avenue in Bloomfield. I don't
19 remember his name. I just went there. And
20 then my lawyer said, Barb --
21 Q. I don't want to know what your lawyer said.
22 A. No. He just said for me to go to another
23 doctor. So I went to the No. 1 doctor in the
24 country recommended by the RSD Association.

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1 And he said, You definitely have RSD.
2 Q. And who --
3 A. And --
4 Q. -- was that doctor?
5 A. Kirk- -- Kirkpatrick.
6 Q. Where is he located?
7 A. Florida, Tampa. And he said that I'm disabled.
8 So . . .
9 Q. And are you receiving long-term disability
10 benefits?
11 A. Now? Yes.
12 Q. Okay. And who is the long-term --
13 A. Oh, the State. Okay. I'm sorry. The State
14 doctors totally disabled me.
15 Q. Okay. And who is the -- that's the City of
16 Hart- --
17 A. The -- the Retir- -- the State of
18 Connecticut --
19 Q. Is that --
20 A. -- Teachers Retirement, they disabled me --
21 Q. Was that the --
22 A. -- from teaching.
23 Q. Is that the Retirement Board?
24 A. Yes.

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1 Q. For the State of Hartford?
2 A. No. State of Connecticut.
3 Q. State of Connecticut. City of Hartford?
4 A. No. State of Connecticut.
5 Q. Okay. And where are they located?
6 A. I don't know. Hartford somewhere --
7 Q. Have you --
8 A. -- I think.
9 Q. -- applied for Social Security disability --
10 A. No.
11 Q. -- benefits?
12 A. Don't qualify.
13 Q. Because you have a state pension. Correct?
14 A. Yes. Uh-huh.
15 Q. And what is the disability?
16 A. The worst part right now is the RSD, reflexive
17 sympathetic dystrophy.
18 Q. And what does that keep you from doing?
19 A. Keep me from doing?
20 Q. Yes.
21 A. Living.
22 Q. Well, what --
23 A. Pain.
24 Q. What specifically can you not do because of

109

1 your RSD?

2 A. I -- well, what I do do is, I, primarily, lay

3 down most of the day. I'm off my foot. Doing

4 anything is extremely painful.

5 Q. Do you have any plans for treatment of the RSD

6 in the future?

7 A. Oh, I've been going.

8 Q. Okay. And what do they do for you for

9 treatment?

10 A. Medication.

11 Q. And that's the medication you're currently on

12 today?

13 A. Yes.

14 Q. What medication is that?

15 A. A DURAGESIC patch and Hydrocodone.

16 Q. Hydrocortisone?

17 A. No. Hydrocodone.

18 Q. Okay. Any other medications you're taking

19 today?

20 A. No.

21 Q. How often --

22 A. Wait a minute now. Well, no, I -- not today,

23 no.

24 Q. Okay. Are there any other medications that you

110

1 take on a regular basis?

2 A. Sometimes, I take, if I get a migraine,

3 Imitrex. And then I take Fosamax. And that's

4 it, I believe. I think that's it. But they

5 had to increase almost a hundred percent my --

6 the patch. The doctor just did because --

7 Q. And that's Dr. --

8 A. -- the pain is so severe. I also see a doctor

9 at Brigham and Women's --

10 Q. Who's --

11 A. -- for --

12 Q. Who's that?

13 A. Michna.

14 Q. I see you came here today with a cane. How

15 long have you been using a cane?

16 A. Well, was it -- well, when I got off of

17 crutches. 'Cause I stumble a lot. That's

18 my -- if I'm walking, all of a sudden, I go --

19 I lose like my balance.

20 Q. Following the accident, you were on crutches.

21 Correct?

22 A. Yes.

23 Q. How long were you --

24 A. In a wheelchair.

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1 Q. How long were you on cru- --

2 A. A year.

3 Q. I have to finish my question.

4 A. Oh, I thought you did.

5 Q. How long were you on crutches following the '97

6 accident?

7 A. About a year.

8 Q. And then you went to a wheel- --

9 A. And off and on. Excuse me. I've gone back and

10 forth on them though.

11 Q. And how long were -- have you been in

12 a wheel- -- were you in a wheelchair following

13 the accident?

14 A. I still go in -- I still use a wheelchair like

15 for distance. I can't walk very far 'cause I

16 just don't have the stamina. I'll just freeze.

17 I stop walking. And the pain gets -- it's

18 just unbelievable pain, like . . .

19 Q. What's the furthest amount you can walk?

20 A. Oh, I don't -- I've never measured it. But I

21 don't like walk walk. You know, people walk

22 around the block and things like that. I don't

23 do that. The more I'm on my leg, the worse the

24 pain. Like walking from the parking lot here,

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1 I am scared of what tonight's going to be.

2 Q. How often do you use the cane during the week?

3 A. When I'm out of the house if I'm out of the

4 house.

5 Q. So you --

6 A. I don't use it in the house 'cause I've got,

7 you know, counters that I can grab onto.

8 Q. So you never walk unassisted?

9 A. Sometimes, I do. But, usually, if I'm out, if

10 I -- you know, if I'm not like with my husband

11 to hold onto for balance. It's, primarily,

12 like balance that -- you know, a security thing

13 so I don't fall and stumble and . . .

14 Q. Your house in Longmeadow, is it a ranch house?

15 A. No.

16 Q. Okay. You have stairs in the house?

17 A. Yes.

18 Q. And you're able to walk the stairs?

19 A. Well, not good. We're going to be moving.

20 We're going to have to build a ranch or else

21 put an elevator in.

22 Q. Okay. Any other lawsuits? Did you ever fi- --

23 sue Travelers at all for workers' compensation

24 benefits or anything else?

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1 A. You can't. No. You can't sue your employer.
 2 That's what I was told.
 3 Q. I'm talking about Travelers. Have you ever
 4 sued them, Travelers Insurance Company?
 5 A. You couldn't sue them. I had to -- I could not
 6 sue the City of Hartford.
 7 MR. REVERE: Barb -- yeah.
 8 A. I --
 9 MR. REVERE: Just --
 10 Q. I understand. I underst- --
 11 MR. REVERE: -- stick to the -- it's a yes
 12 or no question.
 13 Q. Travelers Ins- --
 14 MR. REVERE: It's yes or no.
 15 Q. Travelers Insurance Company, did you ever sue
 16 Travelers Insurance Company? I'm not talking
 17 about the City of Hartford.
 18 MR. REVERE: No.
 19 A. I don't think so. Right.
 20 Q. Did you ever threaten to sue them that you're
 21 aware of?
 22 A. Sue Travelers?
 23 Q. Yes.
 24 A. They weren't -- you couldn't sue your

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1 employer --
 2 Q. Okay. So you don't --
 3 A. -- or --
 4 Q. You don't recall threatening to sue Travelers
 5 Insurance Company. Correct?
 6 A. Not that I know of.
 7 Q. Any other lawsuits --
 8 A. I don't know that my lawyer was -- I doubt that
 9 he would be; because he was, basically, working
 10 for them.
 11 Q. Any other lawsuits that you've been a party to
 12 other than what you've told me about today or
 13 anything dealing with your property down in
 14 Truro?
 15 A. I can't think of any.
 16 Q. Have you ever sued any of your neighbors?
 17 A. My neighbors?
 18 Q. Yes.
 19 A. No.
 20 Q. Okay. Have you ever gotten involved in any or
 21 objected to any building permits -- other than
 22 Ms. Newman -- building permits or applications
 23 that any of your neighbors have --
 24 A. Oh, no.

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1 Q. -- applied for?
 2 A. No.
 3 Q. You have filed a lawsuit --
 4 MS. ECKER: What?
 5 MR. REVERE: I -- well, I just was -- let's
 6 go off the record for a second.
 7 (A brief discussion was held off the
 8 record.)
 9 Q. You have filed a lawsuit against the Town and
 10 the Zoning Board of Appeal you're -- that we're
 11 here to discuss today. Correct?
 12 A. Yes.
 13 Q. And, in that lawsuit, you claim that you
 14 have --
 15 A. I understand. That's okay. I just --
 16 Q. That's fine. In that lawsuit, you claim that
 17 you have been discriminated against by the Town
 18 of Truro and the Zoning Board of Appeals
 19 because you are Lebanese. Correct?
 20 A. Yes.
 21 Q. You claim that you have been discriminated
 22 against by the Town of Truro and the Zoning
 23 Board of Appeals because of your national
 24 origin due to the fact that many of the members

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1 of the town boards are Jewish. Correct?
 2 A. Yes.
 3 Q. What members of the town boards are you
 4 claiming are Jewish that have discriminated
 5 against you?
 6 A. Conservation Commission, No. 1.
 7 Q. Which members of the Conservation Commission
 8 are Jewish that have discriminated against you?
 9 A. I've been told that most of all of the boards
 10 are compiled of Jewish members.
 11 Q. I'm asking you specifically -- and we'll go
 12 board by board --
 13 A. Uh-huh.
 14 Q. -- which members of the Conservation
 15 Commission --
 16 A. I'd have to see -- okay. Go ahead.
 17 Q. -- for the town of Truro -- well, let me -- let
 18 me break it up. Which members of the
 19 Conservation Commission of the Town of Truro
 20 are you claiming actually discriminated against
 21 you because you are Lebanese?
 22 A. I would say, in whole, the whole entire board
 23 and . . .
 24 Q. And what's the basis of your saying --

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1 A. What's the basis?
 2 Q. -- that all -- let me finish -- that all the
 3 individual members of the Conservation
 4 Commission in the town of Truro discriminated
 5 against you because you are Lebanese?
 6 A. For what basis?
 7 Q. What's your basis for saying that?
 8 A. As soon as I apply for something, I get denied.
 9 Yet if Brooke Newman or the yacht club and
 10 others want something, bingo, different
 11 standards. You know, Barbara wants something;
 12 stop her dead in her tracks.
 13 Q. And you believe --
 14 A. And I've had --
 15 Q. It's your allegation that that is because you
 16 are Lebanese?
 17 A. Everybody likes me. That's the only reason.
 18 I -- I have absolutely no problem with people.
 19 Q. Which specific member of the Conservation
 20 Commission in the town of Truro are you
 21 claiming is Jewish and discriminated against
 22 you because you are Lebanese?
 23 A. Which one specifically?
 24 Q. Yes.

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1 A. Let me speak to my lawyer.
 2 Q. No. I ne- -- I need you --
 3 MR. REVERE: No.
 4 Q. -- to answer the question.
 5 MR. REVERE: I --
 6 Q. I need you to --
 7 MR. REVERE: Until you an- --
 8 Q. -- answer the pending question.
 9 MR. REVERE: -- answer the question. Yeah.
 10 A. No. 1, I would say, Mr. Bednarek.
 11 Q. And is it your contention that Mr. Bednarek is
 12 Jewish?
 13 A. I've been told he was.
 14 Q. Who told you that?
 15 A. People in town. Just, you know --
 16 Q. And --
 17 A. -- people you run into.
 18 Q. And what is your basis for claiming that he has
 19 discriminated against you because you're
 20 Lebanese?
 21 A. Different strokes for different folks. And,
 22 like I said before, standards are applied
 23 differently. And there is absolutely no reason
 24 whatsoever that differs one person's property

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1 from another that I'm being treated the same
 2 as, specifically, Brooke Newman. And she goes
 3 for a permit. Fine. She goes -- doesn't do
 4 things properly. Fine. She does what she
 5 wants. Fine.
 6 The yacht club, heaven forbid that they get
 7 a permit. They have -- now they've got a well.
 8 Now they have a septic system. Yeah. We have
 9 documentation they have a cess- -- that they
 10 had a cesspool.
 11 Q. Let me -- let me -- let me -- I -- I'm focused
 12 on a very specific question. You allege that
 13 Mr. Bednarek --
 14 A. Yeah.
 15 Q. -- has discriminated against you because you
 16 were Lebanese.
 17 A. Yes.
 18 Q. Him personally. What is the basis for your
 19 claiming that Mr. Bednarek has discriminated
 20 against you?
 21 A. I would say that the proof of the
 22 discrimination, whether -- okay. If all of a
 23 sudden -- okay. I had a permit for my floats
 24 by the Conservation Commission. Everything was

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1 fine. Same floats that are on my property that
 2 I bought the house with are still there. They
 3 gave me the floats. Then I get charged \$2,100
 4 for my floats if I were to use them. The yacht
 5 club next door, \$300. Conservation Commission,
 6 Harbor Commission.
 7 I can't -- the Town of Truro decides that
 8 they're going to say -- and get together with
 9 Brooke Newman -- I'm going to interfere with
 10 navigation. At the end of my pier -- it's not
 11 a dock now, which I bought it as a dock. And
 12 at the end of the dock, Brook Newman's
 13 mooring's there.
 14 Q. All right. I'm -- you --
 15 A. And the --
 16 Q. -- we're going --
 17 A. -- Conservation Com- --
 18 Q. -- we're going astray.
 19 A. Wait a minute. Conservation Commission, you're
 20 supposed to supposedly -- they say, oh, you're
 21 going to dig up -- if you put in your floats or
 22 your dock, you're going to dig up shellfish;
 23 you're going to dig up whatever; you're going
 24 to kill fish.

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1 But, on the other hand, when they drop
2 moorings in the same spot for other people,
3 they don't kill any vegetation, any shellfish.
4 When they dredge, there is no harm to the
5 shellfish or whatever. And that's Conservation
6 Commission --
7 Q. Ms. --
8 A. -- just --
9 MR. REVERE: Yeah. All right.
10 Q. -- Ms. Cordi-Allen, let me -- let me --
11 MR. REVERE: She's asking you about --
12 A. Very --
13 MR. REVERE: -- your Lebanese descent.
14 What --
15 THE WITNESS: That's what I'm saying.
16 MR. REVERE: -- support- -- no. But
17 what --
18 THE WITNESS: They just --
19 MR. REVERE: Li- -- listen to her question.
20 Q. Let -- let me -- let me --
21 MR. REVERE: Okay?
22 Q. Let me ask it another way.
23 A. Uh-huh.
24 Q. Have you heard any town employee or any member

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1 of a town board ever say anything about your
2 Lebanese descent?
3 A. Have I heard them? No.
4 Q. Has anyone told you any comments that have been
5 made about you by any member of a town board or
6 any town employee because you are Lebanese?
7 A. I have heard a lot of racial comments in Truro.
8 Q. Against you?
9 A. Against minorities, period. And --
10 Q. Who has -- who has specifically made a comment
11 that you have heard that is racial in nature in
12 the town of Truro?
13 A. When I invited my students to my house, to use
14 my house, I was told by people in -- down at
15 the harbor, I wouldn't do that if I were you.
16 I've had the water shut off in my house when my
17 students were at my house.
18 Q. I'm ask- -- I'm asking you for a specific --
19 you testified that the Town of Truro --
20 A. Right.
21 Q. -- has made racial comments. Correct?
22 A. Yes.
23 Q. Who specifically in the town of Truro made a
24 racial comment? It's a very focused --

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1 A. Yeah.
2 Q. -- question.
3 A. And I'm telling you what's -- what's been
4 happening. And I told -- when I was down in
5 the harbor, I told the harbormaster. And I
6 said, there are going to be some kids coming
7 down. I'm letting them use my house. And he
8 goes to me, he goes, I wouldn't do that with --
9 if I were you. The yacht club's not going to
10 be too happy with that. And I'm like, okay.
11 Q. Let me ask you another way. What racial
12 comment are you alleging anyone in the town of
13 Truro has made -- racial comment?
14 A. That I should not allow my students, which are
15 a hundred-percent African American, at my
16 house.
17 Q. And --
18 A. And I have --
19 Q. Has anyone who -- well, let me ask you this.
20 A. Uh-huh.
21 Q. Have you heard anybody in the town of Truro say
22 specifically that you should not have your
23 students, because they are African American,
24 use your house?

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1 A. Yes.
2 Q. Who specifically said that?
3 A. The harbormaster told me that.
4 Q. Okay. And which harbormaster's that?
5 A. Ron Roderick.
6 Q. So is it your testimony that Mr. Roderick made
7 a racial comment?
8 A. Yes.
9 Q. And that Mr. Roderick's comments discriminated
10 against you?
11 A. It discriminated against any minority.
12 Q. Okay. Now, let me ask you another question.
13 Have you heard any town employee or member of a
14 town board make any racial comment, slur,
15 innuendo against you specifically?
16 A. No.
17 Q. Have you heard any town employee, member of a
18 town board say any specific comment about
19 Lebanese individuals that was offensive or
20 derogatory?
21 A. No.
22 Q. So when you say that the Town --
23 A. Uh-huh.
24 Q. -- and the member of the boards have

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1 discriminated against you because you are
2 Lebanese --
3 A. Uh-huh.
4 Q. -- since they haven't made any comments about
5 your being Lebanese, what is the basis for your
6 claiming that they have discriminated against
7 you because of your national origin?
8 A. As I said, the inconsistencies in the treatment
9 and flip-flopping all of a sudden.
10 Q. Is it your contention that any town -- whoop --
11 any member of a town board who disagrees with
12 you is discriminating against you because
13 you're Lebanese?
14 A. It's my contention that I'm not giving --
15 getting my permits -- and other people get
16 theirs -- because of discrimination.
17 Definitely.
18 Q. I'm asking you now specifically -- because you
19 can't just say because of discrimination --
20 A. Right.
21 Q. -- specifically what you base your belief on
22 that you're not getting your permits because
23 you're Lebanese. And so I'm asking you
24 specifically, who in the town is discriminating

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1 against you? And what is the basis for your
2 claim that that individual is discriminating
3 against you because you're Lebanese?
4 A. I would say that the boards are, because they
5 will not give me -- and they meet behind their
6 closed doors; they get on their phones. Brooke
7 Newman can do what she wants. Others do what
8 they want. There was a problem -- for example,
9 my house that I own now, okay, when the
10 previous owners owned it, they were told by DEP
11 one thing -- that it's not in a dune twice.
12 Q. Was the previous owner Jewish?
13 A. Yes. Yes.
14 Q. And did the Town deny the previous owner any
15 permits, in your opinion, because they were
16 Jewish?
17 A. Did they deny?
18 Q. Yes.
19 A. No. They got --
20 Q. Did the Town --
21 A. -- their permits.
22 Q. They got their permits?
23 A. Yes.
24 Q. And you believe that they got their permits

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1 because they were Jewish; and you didn't
2 because you're Lebanese. Correct?
3 A. Yes.
4 Q. So I'm asking you which specific individual --
5 or let me strike that. I'm asking what
6 evidence you have that the reason that your
7 permits were denied was because you were
8 Lebanese.
9 A. Because of the inconsistencies in the way
10 people are treated. Different peoples (sic)
11 are treated differently in Truro.
12 Q. Is it your testimony --
13 A. And I'm talking about me versus others.
14 Q. Is it your testimony that because the boards
15 disagreed with you, it must be because you're
16 Lebanese and not because they had a good basis
17 for disagreeing with you?
18 A. Yes.
19 Q. And which members of the Zoning Board of
20 Appeals are you claiming are Jewish?
21 A. I would say that the -- I don't remember their
22 names.
23 Q. Well, let me show you the --
24 A. Okay. Let me -- let me say this to you. It's

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1 the inconsistencies of the Town of Truro
2 tog- --
3 Q. You keep --
4 A. -- together, okay, in how people are treated.
5 And there is absolutely, okay, no reason the
6 yacht club --
7 Q. I don't want -- we -- no. Let me -- I'm asking
8 you a very focused question, and I want you to
9 focus on this question. You have filed a
10 discrimination lawsuit --
11 A. Yes.
12 Q. -- against the Town of Truro and the members of
13 the Town of Truro Zoning Board of -- of
14 Appeals --
15 A. Uh-huh.
16 Q. -- alleging that they have discriminated
17 against you and made their decisions regarding
18 your permit applications because you are
19 Lebanese --
20 A. Uh-huh.
21 Q. -- and because they're Jewish, some members.
22 And so what I'm trying to focus you on --
23 because --
24 A. And that --

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1 Q. -- this is the basis for your --
 2 A. Uh-huh.
 3 Q. -- lawsuit that you have --
 4 A. Uh-huh.
 5 Q. -- brought -- is what evidence you have that
 6 any specific member is Jewish and evidence that
 7 any specific member made their decision in
 8 denying your permit applications because you
 9 were Lebanese.
 10 A. I would say, the entire committees. And not
 11 only do people -- and it's evident now that
 12 people not only are Jewish, but other people,
 13 they just don't plain like anybody from the
 14 Middle East; and you see that all over TV, all
 15 over the newspaper, whatever. I have lived in
 16 Truro for -- let's see -- 21 years we've had a
 17 house in Truro. Not until we went before any
 18 of these boards was there ever a problem with
 19 anybody in Truro ever.
 20 It wasn't until Brooke Newman walked in and
 21 decided that was the way things are going to
 22 be. She's going to get what she wants. She's
 23 going to use whatever. She's going to use her
 24 contacts, whatever, and get people to turn on

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1 us. And you know what? There is absolutely no
 2 person that we don't get along with.
 3 However, the yacht club members, Brooke
 4 Newman have gotten away with holy murder
 5 because of their connections, their contacts,
 6 whatever, with peoples (sic) of the various
 7 boards. And we -- my husband and I, our kids,
 8 we don't bother anybody. You learn, first of
 9 all, you're supposed to get along with your
 10 neighbors.
 11 Yet they've gotten people on their
 12 committees to flip-flop, go against us, try to
 13 make us lo- -- I've read the newspaper. People
 14 have been threatened in town that they better
 15 go against us. For example, the harbormaster --
 16 Q. Wait, wait.
 17 A. -- was told by the Harbor Commission that he
 18 had to go --
 19 Q. All right.
 20 A. -- against us.
 21 Q. We're -- we're going to -- we're getting far
 22 astray --
 23 MR. REVERE: Yeah.
 24 Q. -- on the question. Let -- let me --

131

1 MR. REVERE: Barb -- Barb --
 2 Q. Let me ask you -- let me ask you one question
 3 first.
 4 A. Right.
 5 Q. Okay. You allege that it's because of
 6 Ms. Newman when she came to town. Isn't it
 7 true that one of your permits was denied before
 8 Ms. Newman purchased her property?
 9 A. We were approved for a dock and --
 10 Q. Just focus --
 11 A. Wait a minute.
 12 Q. -- on the question.
 13 A. I'm thinking.
 14 MR. REVERE: She asked you a question,
 15 Barb.
 16 THE WITNESS: I know. But I'm thinking,
 17 Paul.
 18 MR. REVERE: If you -- if you don't know
 19 the answer at the moment, that -- that's --
 20 THE WITNESS: Paul --
 21 MR. REVERE: -- a fine --
 22 THE WITNESS: -- I'm thinking --
 23 MR. REVERE: Okay.
 24 THE WITNESS: -- out loud.

132

1 MR. REVERE: But just listen to her
 2 question --
 3 A. We put in --
 4 MR. REVERE: -- and answer the question.
 5 THE WITNESS: I am. I'm trying to.
 6 A. We put in for a dock in 1996. We were
 7 permitted. In 1997 is when I got hurt. And
 8 that's when Warren was threatened; the
 9 harbormaster was threatened. So in 1997 is
 10 when we started getting basic threats that --
 11 or people were threatened that they better go
 12 against us.
 13 Q. And you believe --
 14 A. I was told that by the person himself, and it
 15 was in the newspaper.
 16 Q. Who was that person?
 17 A. Warren Roderick.
 18 Q. And is it your allegation that that's because
 19 Ms. Newman told him to go against you?
 20 A. The yacht club.
 21 Q. Okay. But did --
 22 A. It was the yacht club.
 23 Q. Did Ms. Newman have anything to do with that?
 24 A. At that time, no, not that I know of. But she

133

1 has joined in on that.

2 Q. Do you know anyone that Ms. Newman has

3 threatened that if they didn't go along with

4 you -- with Ms. Newman, there would be some

5 repercussions?

6 A. I don't talk to her at all. So I just --

7 Q. Do you have any information that Ms. Newman has

8 threatened anyone concerning going along with

9 you and your property?

10 A. I know from the newspapers, from what I've

11 read, that the harbormaster was.

12 Q. By Ms. Newman?

13 A. No.

14 Q. I'm focusing on Ms. Newman.

15 A. No. That's all -- that's what I'm telling you,

16 is what I know is what I read in the

17 newspapers. And what I read in the newspapers

18 was that the harbormaster was told that he had

19 to go against us.

20 Q. Have you ever talked to that harbormaster about

21 that allegation?

22 A. Yes. I did.

23 Q. And do you know why the harbormaster is no

24 longer the harbormaster of the town of Truro?

134

1 A. I -- I think there was something -- I'm not

2 positive. But I think there was something

3 about hours that he worked.

4 Q. I -- I'm going to focus again on your

5 discrimination claim because --

6 A. Uh-huh.

7 Q. -- you have brought it.

8 A. Uh-huh.

9 Q. So I need to know what evidence you have that

10 any specific member of the Town of Truro Board

11 of Appeals who you have sued -- and that would

12 include Joseph Conlon, Arthur Hutlin, Norman

13 Pope, Keith Althaus, and Marinna Matricardi --

14 any of those members of the Zoning Board of

15 Appeal Jewish that you're aware of?

16 A. Do I know who i- -- who is? No.

17 Q. Are you alleging that any of them are Jewish?

18 A. I don't know who they are.

19 Q. Okay. Are you alleging that any of the members

20 of the Zoning Board of Appeals denied your

21 appeal of the building inspector's denial of

22 your application to revoke Ms. Newman's

23 building permit because you are Lebanese?

24 A. I would say that I was -- in -- I don't know

135

1 how familiar you are with Truro. But Truro is,

2 basically, run by the yacht club --

3 Q. Okay.

4 A. -- in that -- okay.

5 Q. I understand that's your allegation.

6 MR. REVERE: Listen --

7 Q. Right now, I am fo- --

8 MR. REVERE: -- to her question.

9 Q. I am focusing on, you have alleged in your

10 Complaint --

11 A. But it's two-fold. What I'm saying to you

12 is --

13 Q. No. But --

14 A. -- it's not just Brooke Newman.

15 Q. You have not filed a lawsuit against the yacht

16 club. Correct? This lawsuit is not against

17 the yacht club. Correct?

18 A. They're a party --

19 Q. I'll show you a --

20 A. -- to it.

21 Q. No. They're not. I'll show you a caption, and

22 I'll represent to you --

23 A. Wait a minute. Wait a minute. Let me put my

24 glasses on. Okay.

136

1 Q. Okay. You have sued, in this case, it is

2 *Barbara Cordi-Allen* --

3 A. Right.

4 Q. -- and *John Allen versus John R. Conlon* --

5 A. Uh-huh.

6 Q. -- *Arthur F. Hutlin* --

7 A. Right.

8 Q. -- or *Hutlin, Norman* --

9 A. Those are the Zoning Board.

10 Q. Zoning -- *Norman H. Pope* --

11 A. Uh-huh.

12 Q. -- *Keith Salthaus* --

13 A. Uh-huh.

14 Q. -- *Marinna Matricardi* --

15 A. Uh-huh.

16 Q. -- as they are *Members of the Town of Truro*

17 *Zoning Board of Appeals and the Town of Truro.*

18 A. Uh-huh.

19 Q. And you have alleged that the Town and these

20 individuals have discriminated against you --

21 A. Uh-huh.

22 Q. -- because you were Lebanese.

23 A. Uh-huh.

24 Q. And I am asking you, do you have any evidence

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1 that any of the members of the Zoning Board of
2 Appeals took the fact that you were Lebanese
3 into account when they made the decision to
4 deny your appeal of the building inspector's
5 denial of your application to revoke
6 Ms. Newman's --
7 A. Do I have any proof?
8 Q. -- building permit? Any evidence.
9 A. Any --
10 Q. Any evidence.
11 A. Only the evidence that people who are Jewish
12 get permits like that. And I have not gotten
13 mine.
14 Q. Which specific individual, other than
15 Ms. Newman, who is Jewish --
16 A. Right.
17 Q. -- got an application just like that?
18 A. Well, the yacht club, for -- and whi- -- which
19 is --
20 Q. What member --
21 A. -- composed -- the yacht club and their board
22 or whatever you call it. I don't even know the
23 men's name. But they've been here, represented
24 the yacht club.

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1 Q. Are they Jewish?
2 A. Yes. Yes.
3 Q. Who specifically at the yacht club's Jewish?
4 A. The majority of members are.
5 Q. Give me a specific individual at the yacht club
6 who --
7 A. Well, they were --
8 Q. -- you believe is --
9 A. -- at the --
10 Q. -- Jewish.
11 A. -- meetings. They were the lawyers for them.
12 And I don't know their names.
13 Q. So is it your allegation that the lawyers for
14 the yacht club are Jewish or that the members
15 of --
16 A. Both.
17 Q. -- the yacht club are --
18 A. Both.
19 Q. What specific member of the yacht club's
20 Jewish?
21 A. I can't tell you his name. But I told you he
22 was the lawyer representing them at DEP. But
23 he's the member. He's an old man. And the
24 thing is, with the yacht club, they do what the

139

1 members want.
2 And their only attack on me -- when I
3 bought that property, I was told, They're
4 having a belly dancing party next door.
5 They're going to have dah-dah; and it's \$40 a
6 person if you want to go. And I'm like, What
7 do I want to go there for, you know, and spend
8 \$200.
9 Q. We're getting --
10 A. Wait.
11 Q. -- far afield.
12 A. No.
13 Q. I'm asking you --
14 A. But this is how they --
15 Q. No.
16 A. -- found out who --
17 Q. Ms. Cordi- --
18 A. -- I was.
19 Q. Ms. Cordi-Allen, I need to know -- and this is
20 a very specific question --
21 A. Uh-huh.
22 Q. -- do you have absolutely any evidence, any
23 evidence that any member that you have sued of
24 the Zoning Board of Appeals or the Town of

140

1 Truro took into account that you were Lebanese
2 when they made their decision to --
3 A. Yeah.
4 Q. -- deny your appeal of the building inspector's
5 denial of your application to revoke Ms. Newman's
6 building permit?
7 A. In that, as I was saying, the yacht club,
8 basically, controls the town of Truro. And
9 it's their members that want to attack, and
10 they have the power and the purse strings to
11 attack whomever they want. Yet the Town takes
12 no enforcement whatsoever on them when they
13 blatantly lie to the Town, when they don't get
14 their permits for a septic, when they put
15 propane gas tanks out there.
16 And they, in concert with Ms. Newman, get
17 away with total murder. Yet here I am. And
18 the only difference is that I'm a minority.
19 That's the only difference. They get
20 everything. We're in the same environment, and
21 I get shit on.
22 Q. Do you know if any member or any resident of
23 the town of Truro who owns property who is
24 Lebanese has been granted a building permit or

141

1 any type of permit from the town?
2 A. No. I don't.
3 Q. Do you know if there are other Lebanese
4 individuals who live in the town of Truro?
5 A. No. I don't.
6 Q. Do you know if there are any Lebanese
7 individuals who work for the Town of Truro?
8 A. No. I don't.
9 Q. Do you know if there are Lebanese individuals
10 who have made decisions concerning your
11 property?
12 A. No. I don't.
13 Q. Do you know if there are any Lebanese
14 individuals who advise -- have advised the Town
15 as to what to do with your property?
16 A. No. I don't.
17 Q. And you can't tell me a specific individual in
18 the yacht club who is Jewish other than the
19 lawyer who --
20 A. It --
21 Q. -- represented them?
22 A. It's in the DEP listing of names. So that's
23 where you could find it.
24 Q. Have you heard any anti-Lebanese comments at

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1 all within the town of Truro?
2 A. You hear people talking if you go uptown into
3 different places, you know, about Arabs and
4 this and that. And, frankly, I myself am a
5 private person. And so is my husband and my
6 family. And as far as going out of my way --
7 Q. Have you heard any comments specifically about
8 people being Lebanese in your town?
9 A. People being Lebanese?
10 Q. Yes.
11 A. No.
12 Q. Have you heard any anti- -- specific
13 anti-Lebanese comments made in the town of
14 Truro?
15 A. Specific. I just -- you hear comments about
16 Arabs and Middle Eastern people. I mean,
17 but --
18 Q. Who specifically makes those --
19 A. Just --
20 Q. -- comments?
21 A. -- people. People.
22 Q. Can you tell me any specific individual who is
23 on a board of the Town of Truro or is employed
24 by the Town of Truro who has made an anti-Arab

143

1 comment?
2 A. I don't talk to them.
3 Q. So you haven't heard any employee of the Town
4 of Truro or any member of a board of the Town
5 of Truro make any negative Arab comments.
6 Correct?
7 A. I don't talk with them. I'm --
8 Q. It's a specific --
9 A. We're very private. No. What I'm saying to
10 you, Miss, is that we are very private; we mind
11 our business. Okay. But it's the actions.
12 Q. I'm asking you a specific question. Have you
13 heard --
14 A. Uh-huh.
15 Q. -- any member of a board in the town of Truro
16 or an employee of the Town of Truro make any
17 anti-Arab or anti-Lebanese comments?
18 A. No, not that I . . .
19 Q. And is your husband Lebanese?
20 A. No.
21 Q. And were you born in Lebanon?
22 A. No.
23 Q. Are you a hundred-percent Lebanese?
24 A. No.

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1 Q. What percentage are you?
2 A. Fifty.
3 Q. Okay. And what's your other nationality?
4 A. Italian.
5 Q. And are you a Christian Lebanese or a Muslim
6 Lebanese?
7 A. I'm Christian, but I'm open- -- open-minded.
8 Q. Is your background -- is your family's
9 background as a Christian Lebanese or a Muslim
10 Leb- -- Lebanese when they came over from
11 Lebanon?
12 A. Most of my family is Catholic.
13 Q. Okay. So they were Christian?
14 A. Catholic.
15 Q. You understand that there was a -- there's a
16 split in Lebanon between the Muslims and the
17 Christians?
18 A. Uh-huh.
19 Q. Okay. And your family is part of the Christian
20 sect?
21 A. The Catholic sect. Yeah.
22 Q. The Catholics. Okay.
23 MS. ECKER: Okay. Why don't we --
24 A. Actually, we're from the House of David. My --

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1 my -- my family is. So . . .
2 MS. ECKER: Okay. Why don't we take a
3 break. It's 1:30. I don't know what you're --
4 how you're doing.
5 MR. REVERE: I think we should make it
6 shorter.
7 MS. ECKER: Yeah. Why don't we do -- yeah.
8 MR. REVERE: Half an hour?
9 MS. ECKER: Half an hour's fine.
10 (Luncheon recess taken.)
11 BY MS. ECKER:
12 (Plaintiffs' Answers to Defendants' First
13 Set of Interrogatories marked as
14 Cordi-Allen Exhibit No. 7.)
15 Q. Ms. Cordi-Allen, just to remind you, you're
16 still under oath. Do you --
17 A. Uh-huh.
18 Q. -- understand that? Okay. Are you aware if
19 any of the members of the Zoning Board of
20 Appeal in the town of Truro who you have sued
21 are aware that you're Lebanese?
22 A. I'm -- I'm sure people have talked. You know,
23 you hear things like when you're around town or
24 at the beach and there. So -- but do I -- did

147

1 Q. Do you have any information that any of the
2 members of the Board -- of the Board of Appeals
3 for the Town of Truro knew that you were
4 Lebanese prior to your filing this lawsuit?
5 A. Prior? Prior to us going down to the harbor,
6 we had no problems with anybody in town. So I
7 wouldn't know.
8 Q. Okay. So you don't know of any information
9 which would lead you to believe that any of the
10 Zoning Board of Appeal members who you have
11 sued knew that you're -- knew that you were
12 Lebanese at the time they made their decision?
13 A. Do I know that?
14 Q. Yes.
15 A. I have no doubt that people have been talking
16 about it. So 99.9 percent, I would say that
17 they did. But do I approve of it? No.
18 Q. Did you --
19 A. I can't tell you that you told them, you know,
20 that type of thing.
21 Q. Prior to this lawsuit though. I've only been
22 involved since this lawsuit.
23 A. No, no, no.
24 Q. Yeah.

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1 I tell anybody?
2 Q. Yes.
3 A. The yacht club knows. And --
4 Q. I see. How do you know that the yacht club
5 knows that you're Lebanese?
6 A. Because, when we bought our property, they
7 had -- I don't know -- some party there. And
8 they said that if we wanted to come, it was
9 like it would have cost about \$200. And they
10 were going to have like Middle Eastern food.
11 And I'm like, No. You know, I'm not spending
12 that kind of money. I have that food all the
13 time. It didn't really thrill me. So --
14 Q. Did you --
15 A. -- at that point, they knew. But --
16 Q. Did you tell anyone at the yacht club that you
17 were Lebanese?
18 A. When they mentioned, yeah, about, you know, if
19 we wanted to go over there.
20 Q. Who did you tell at the yacht club that you
21 were Lebanese?
22 A. Nick Brown was the person.
23 Q. Okay.
24 A. He sold us the house.

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1 A. I'm not saying you --
2 Q. Yeah.
3 A. -- specifically. I meant you in general, you
4 know, sent --
5 Q. But you didn't tell them. Correct?
6 A. I don't talk with them --
7 Q. Okay.
8 A. -- to be honest.
9 Q. What -- what about the Board of Health, do you
10 know if any members of the Board of Health knew
11 that you were Lebanese at the time they made
12 decisions regarding the applications you filed
13 for your property?
14 A. The Board of Health. I'm thinking. They
15 changed so much, the Board of Health. I can't
16 answer. I can't tell you specifically. I
17 think the person that -- Con- -- I was saying
18 Conservation Commission. I've been there. Can
19 I ask her a question?
20 Q. No. This is your testimony.
21 A. I just wanted to ask her who was -- who was who
22 on the Commission.
23 Q. No. She can't testify. She's just --
24 A. I think it wa- -- I'm not sure if the -- the

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1 chair -- chairman -- there's one guy with a
2 beard, and I'm not sure if he's -- and I don't
3 remember if he's Bednarek or Irwin.
4 Q. Do you have any --
5 A. So --
6 Q. Do you have any infor- --
7 A. -- it was the chairman that I'm thinking of
8 that would, more so, have guided people.
9 But . . .
10 Q. Do you have any information that that
11 individual knew that you were Lebanese?
12 A. Like I said, the yacht club, I'm sure, told
13 people. I -- because they're the ones I knew.
14 And as soon as that happened, everything
15 started turning against us.
16 Q. Do you know -- do you have any information
17 that -- that -- well, let me strike that. Do
18 you have any proof though that they actually
19 knew you were Lebanese other than you think the
20 yacht club might have told them?
21 A. I know people in town know that I am. You
22 know, it's a small town. It's a very small
23 town. So there are people -- because we've
24 been there 20 years, people know that -- you

150

1 know, what we -- what we are from being there.
2 And, you know, people talk.
3 I mean, I don't -- I can't control people's
4 phone calls, that type of thing. So I
5 don't -- I don't know about private
6 conversations. But did they say it at a
7 meeting? I haven't heard it, you know,
8 straight out at a meeting. But --
9 Q. Have you told any members of any boards in the
10 town of Truro that you are Lebanese?
11 A. Members of the boards. No. But I will -- but
12 I don't know if I should -- when I'm at -- and
13 I've been at many meetings with Paul. I'll
14 tell you, as soon as -- and we've seen it. So
15 many people, they just, boo, fly through. And
16 I don't know what their problem is with me.
17 But -- and we've been in meetings where one
18 Jewish person after another after another gets
19 their permits. No problem whatsoever. As soon
20 as -- this other guy that owned our property,
21 you know -- and then, all of a sudden, you
22 know, he wasn't in a dune; but, all of a
23 sudden, Barbara is, after -- it -- it's just --
24 it stinks. And it stinks that it's come to

151

1 this.
2 Q. Other than Brooke Newman and the individual who
3 owned her property before you --
4 A. Uh-huh.
5 Q. -- what other Jewish individuals in town have
6 gotten permits that you're aware of that you
7 claim --
8 A. Oh --
9 Q. -- is discriminatory?
10 A. -- we just were at meetings, Conservation
11 Commission meetings, primarily, with my lawyer.
12 And we've seen people just go right through.
13 And, you know, it's --
14 Q. And which one --
15 A. -- like, well --
16 Q. -- of those individuals are Jewish?
17 A. Many of them were.
18 Q. Do you know of any --
19 A. Yeah.
20 Q. -- specific Jewish individual?
21 A. We just were seeing -- you know, just seeing
22 this and like, you know, made comments between
23 ourselves.
24 Q. How do you know the individual applicant was

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1 Jewish?
2 A. People in town would tell you. And if you
3 said, you know, it's funny; but so-and-so and
4 so-and-so and so-and-so went through. And
5 they're like -- you know, people talk.
6 Q. As you sit here today, can you tell me --
7 A. Uh-huh.
8 Q. -- other than Ms. Newman and your prior
9 property --
10 A. Yeah.
11 Q. -- owner -- of any specific Jewish individual
12 who is a property owner in town who has
13 received a permit from the Zoning Board of
14 Appeals in the last five years?
15 A. I think Sandra -- our -- our other new
16 neighbor, Sandra, just got permits. No problem
17 whatsoever. And I don't know anything about
18 her. I don't even know who she -- you know.
19 Q. Do you know if she's Jewish?
20 A. I don't know. I don't know her.
21 Q. Do you know if she's Lebanese?
22 A. I don't know. I don't know her. And I forgot
23 who -- somebody in town. I was thinking about
24 it. Like, I'm really wiped out now. I just

153

1 took another pain pill. But --

2 Q. Does your taking the pain medication affect

3 your ability --

4 A. Right now --

5 Q. -- to testify?

6 A. -- well, I'm just -- I'm wi- -- it's -- after

7 two hours? I mean, I'm -- I'm in -- it's

8 harder for me. Time goes on. But --

9 Q. Well, I have to be --

10 A. I'm just --

11 Q. -- clear about this.

12 A. -- very tired --

13 Q. I have to be --

14 A. -- very tired.

15 Q. -- clear about this on the record. Are you

16 able to testify truthfully while you're on your

17 pain medication?

18 A. Oh, I don't lie. But I get -- I'm -- right

19 now, I'm like losing it. I'm not focusing as

20 much as I should be. But --

21 Q. Are you able to recall facts regarding your

22 lawsuit since you've just taken your pain

23 medication?

24 A. Yeah. Yeah. Depending like what --

154

1 THE WITNESS: Were you going to say

2 something?

3 MR. REVERE: I -- I thought you were done.

4 THE WITNESS: Oh.

5 MR. REVERE: Can we go off the record for

6 just a second?

7 MS. ECKER: Yes.

8 (A brief discussion was held off the

9 record.)

10 MS. ECKER: Back on the record.

11 Q. Does the pain medication that you took at lunch

12 affect your ability to testify with

13 clarification?

14 A. Some clarification, I would say. You know, I

15 might ha- -- if I think about something longer,

16 the more it will come back to me. It may -- I

17 guess, the finer details, I may have to recall.

18 A lot of things I can. But, like, if you ask

19 me more details, then I may forget. But then I

20 may remember.

21 MS. ECKER: Off the record.

22 (A brief discussion was held off the

23 record.)

24 MS. ECKER: And, actually, this can be on

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1 the record. I don't feel comfortable going

2 forward if she is telling me that she is not

3 going to be able to remember the details, given

4 that what I am asking her is the specifics of

5 the allegations --

6 THE WITNESS: Yeah.

7 MS. ECKER: -- contained in the lawsuit.

8 MR. REVERE: No. I -- I fully understand.

9 MS. ECKER: And that -- and that concerns

10 me.

11 MR. REVERE: I -- I was concerned --

12 THE WITNESS: That's the way I --

13 MR. REVERE: Are we on the record?

14 THE WITNESS: See, they just --

15 MS. ECKER: Yes. We are.

16 MR. REVERE: I mean, it doesn't matter to

17 me if you don't want --

18 MS. ECKER: We are on the record. Because

19 I --

20 MR. REVERE: I was concerned that the

21 nature of whether Barb's response was -- is it

22 because of the medication; or is that what, you

23 know --

24 THE WITNESS: Yesterday, they --

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1 MR. REVERE: -- normally --

2 THE WITNESS: -- increased --

3 MR. REVERE: -- the way people recall.

4 THE WITNESS: Yeah. But --

5 MR. REVERE: Okay? And if she could

6 clarify. If it's -- if it's because of the

7 medication, I -- I --

8 THE WITNESS: I think --

9 MR. REVERE: -- completely agree with you.

10 If it's normally recall --

11 THE WITNESS: Yeah. You know, yesterday,

12 they increased my medicine on -- like by a

13 hundred percent.

14 Q. So do you --

15 A. So I think that --

16 Q. Do you feel --

17 A. -- until it's in my system more, I think I'd be

18 better --

19 Q. Okay. Let me just ask you a specific question.

20 Do you feel that the medication you have taken

21 has affected your ability to testify this --

22 A. I think --

23 Q. -- afternoon?

24 A. -- I'm too far all -- I think I'm too far all

157

1 around the place, to be honest with you.
2 Q. Okay. And --
3 A. I guess you probably can tell that too.
4 Q. Yeah. You seem a little bit spacier this
5 afternoon.
6 A. Yeah. But it's a combination of -- you know,
7 this morning, I was too. I wasn't happy the
8 way --
9 Q. Well, it's not --
10 A. I -- I don't feel like I -- I'm as sharp as I
11 should be. And I think I made you guys --
12 Q. Do you think that's bec- --
13 A. -- drag things. You know what I mean?
14 Q. Do you think that's because of the medication
15 or just your ability to recall in general?
16 A. I think -- well, this patch that I'm on -- can
17 we go off the record, please?
18 Q. Just keep it --
19 A. I just wanted to say --
20 Q. -- on the record just so we know.
21 A. Okay. This patch that I'm on, I mean, I -- I
22 was taking like 50 milligrams like it's
23 supposed to be every three days. And now I'm
24 on 75 every two days. And, hopefully, I wasn't

158

1 supposed to supplement it with more pain
2 medicine. And I -- I dragged it out till I --
3 I'm in -- I was in so much pain I had no choice
4 but to take more.
5 But it's new, the strength. So I think
6 that's throwing my body off a lot -- a lot more
7 today than, you know, once you get adjusted to
8 it.
9 Q. And you took more of that at lunch or did
10 something more at lunch?
11 A. I just took one like, you know, a little while
12 ago. I took a pill, a pain pill. But . . .
13 Q. Okay. What kind of pain pill did you take?
14 A. Hydrocodone. So that's my pri- -- I'm in a lot
15 of pain with this dystrophy. That's what it
16 is, you know. And . . .
17 Q. I understand the pain part. I just have --
18 A. Yeah.
19 Q. -- to determine your ability to testify.
20 MR. REVERE: Do you want to --
21 THE WITNESS: Do you want to try it and
22 then see?
23 MS. ECKER: No.
24 MR. REVERE: No. Do you want to take a

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1 minute to think about it or ask her a few
2 questions to give you an idea that it had
3 nothing to do with the matter?
4 MS. ECKER: I actually -- let me -- off the
5 record.
6 (A brief discussion was held off the
7 record.)
8 (Brief recess taken.)
9 BY MS. ECKER:
10 Q. You -- you've told me that the medication
11 you've taken at lunch has affected your ability
12 to --
13 A. I --
14 Q. -- testify --
15 A. -- think so.
16 Q. Let me just fin- -- I just --
17 A. Oh.
18 Q. -- has affected your ability to testify this
19 afternoon. Correct?
20 A. Yes.
21 Q. Okay. And, because of that, I'm going to
22 suspend the deposition. 'Cause I want you to
23 be able to testify, obviously, in a clear,
24 thorough, truthful manner. And I believe that

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1 we have rescheduled then --
2 A. For two weeks.
3 Q. -- for March 31st. So we will begin with you
4 and then have your husband --
5 A. Okay.
6 Q. -- testify after that, once I check --
7 A. That's fine.
8 Q. -- with co-counsel.
9 MR. REVERE: Okay. And do we want to
10 reschedule for 9 a.m., an hour earlier, given
11 that we're losing --
12 MS. ECKER: That would be fine, actually --
13 MR. REVERE: I think that's --?
14 MS. ECKER: -- if that works for you.
15 (Whereupon the deposition was suspended at
16 2:48 p.m.)
17 *****
18
19
20
21
22
23
24

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Dated at _____, this _____
day of _____, 2006.

ERRATA SHEET

INSTRUCTIONS TO WITNESS: 1) Please note any desired corrections to your testimony by page and line number. 2) Enter text as it appears in the transcript. 3) Enter text as it should appear.

| PAGE | LINE | CORRECTION |
|------|------|------------|
|------|------|------------|

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Notary Public

My Commission expires:

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VOLUME

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

CIVIL ACTION NO. 05-10370PBS

BARBARA CORDI-ALLEN AND JOHN ALLEN,)
Plaintiffs,)

vs.)

JOSEPH R. CONLON, ARTHUR F. HUTLIN,)
NORMAN H. POPE, KEITH S. ALTHAUS,)
And MARINNA MATRICARDI as they are)
Members and collectively the TRURO)
ZONING BOARD OF APPEALS AND THE)
TOWN OF TRURO, MASSACHUSETTS, AND)
BROOKE NEWMAN,)
Defendants.)

CONTINUED DEPOSITION OF BARBARA

CORDI-ALLEN, a witness called on behalf of the
Defendants pursuant to the Massachusetts Rules
of Civil Procedure before Jo Anne M. Shields,
Professional Shorthand Reporter and Notary
Public in and for the Commonwealth of
Massachusetts, at the offices of Brody,
Hardoon, Perkins & Kesten, LLP, One Exeter
Plaza, Boston, Massachusetts, on Friday,
March 31, 2006, commencing at 9:33 a.m.DUNN & GOUDREAU COURT REPORTING SERVICE, INC.
One State Street
Boston, Massachusetts 02109
Telephone (617) 742-6900

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By Ms. Ecker 167

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1 APPEARANCES:

2
3 PAUL REVERE, III, ESQUIRE
4 LAW OFFICES OF PAUL REVERE, III
5 226 River View Lane
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7 (508) 778-7126
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12 Boston, Massachusetts 02116
13 (617) 880-7100
14 for the Defendants, Joseph R. Conlon,
15 Arthur F. Hutlin, Norman H. Pope, Keith
16 S. Althaus, and Marinna Matricardi as
17 they are Members and collectively the
18 Truro Zoning Board of Appeals and the
19 Town of Truro, Massachusetts
20
21
22
23
24

ALSO PRESENT:

John Allen

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1 STIPULATIONS

2 It is stipulated by and between
3 counsel for the respective parties that the
4 deposition transcript is to be read and signed
5 by the deponent under the pains and penalties
6 of perjury; and that the sealing and filing
7 thereof are waived; and that all objections,
8 except as to form, and motions to strike are
9 reserved to the time of trial.

11 CROSS-EXAMINATION

12 BY MS. ECKER:

13 Q. Ms. Cordi-Allen -

14 A. Yeah. Hi.

15 Q. Hi. Do you recall that you're still under oath
16 here today?

17 A. Yeah.

18 Q. Okay. And remember to speak up. It's
19 particularly important because I have the fan
20 that is loud. Have you taken any medication
21 this morning that would affect your ability to
22 testify?23 A. I've taken pain medicine again. But I changed
24 it.

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1 Q. Do you believe that the medication you've taken
2 this morning would affect your ability to
3 testify here today?
4 A. No. I -- because I -- I changed it because the
5 last one I was on, obviously, it affected me so
6 mu- -- I slept -- when I left here, I fell
7 asleep in the car; and I slept to two o'clock
8 the next day. And I was throwing up. And then
9 it was just too strong. So --
10 Q. Okay.
11 A. -- I --
12 Q. So you --
13 A. I --
14 Q. -- believe you --
15 A. I took a lower dosage.
16 Q. Okay. So you can believe you can testify here
17 truthfully and completely?
18 A. Yeah.
19 Q. She can't take down the nodding of the heads,
20 if you recall. All right. I am going to show
21 you -- and I've been carrying them around all
22 morning, and now I can't -- here we go -- a
23 document and ask you to look at it and ask if
24 you recognize it.

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1 A. The interrogatories. Yes.
2 MS. ECKER: Okay. Let me have it marked as
3 Exhibit 8. If you can hand it to the
4 stenographer so she can mark it.
5 (Answers to interrogatories marked as
6 Cordi-Allen Exhibit No. 8.)
7 (A brief discussion was held off the
8 record.)
9 MS. ECKER: Back on the record.
10 Q. I've shown you what's been marked as Exhibit 8.
11 And you recognize these as your answers to
12 interrogatories. Correct?
13 A. Yes.
14 Q. Okay. And if you could turn to the very last
15 page, is that a copy of your signature?
16 A. Yes.
17 Q. And when you signed those, you read and
18 reviewed the answers. Correct?
19 A. I believe so. Yes.
20 Q. Okay. And if I could, it says "Original
21 signature to follow"; and I never received an
22 original signature. So if you could sign --
23 A. Which page? This one or the previous?
24 Q. The previous one.

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1 (The witness complies.)
2 Q. And if you would turn to Interrogatory No. 5
3 and your answer in Exhibit No. 8, do you see
4 that?
5 A. Wait a minute. This is --
6 Q. I think -- no. That's my copy. Let's see.
7 Okay. Now, look at No. 5 --
8 MR. REVERE: Yeah. No. 5.
9 Q. -- now that they're in the right order.
10 MR. REVERE: Let's switch to 5 here.
11 Q. And the interrogatory asks you to "State in
12 detail the basis for your claim that the Town
13 of Truro discriminated against you due to your
14 national origin." And you responded. Correct?
15 A. Yeah.
16 Q. Okay. And, in your answer, you say that you
17 are a Lebanese American. Correct?
18 A. Yes.
19 Q. And that that is known to many within the
20 community of the town of Truro. Correct?
21 A. Yes.
22 Q. Okay. Who specifically who is employed by the
23 Town of Truro do you believe is -- was aware
24 that you were Lebanese at the time you filed

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1 your applications?
2 A. The -- the selectmen, Conservation
3 Commission --
4 Q. Which specific --
5 A. -- the Harbor --
6 Q. -- individuals?
7 A. -- Commission. Dr. Irwin is on Conservation.
8 The Harbor Commission.
9 Q. Who specifically on the Harbor Commission do
10 you believe was aware you were Lebanese?
11 A. I forget the names now. I forget their names.
12 Q. Okay. You continue to say --
13 A. Uh-huh.
14 Q. -- in your answer, "The Middle Eastern states
15 of Lebanon and Israel have had significant
16 disputes over the last 30 years with Israel --
17 with the Israeli Army occupying parts of
18 Lebanon for years. Politics in Israel are
19 dominated by members of the Jewish faith." How
20 do you believe the politics between Lebanon and
21 Israel affected you -- the decisions made by
22 the Town of Truro regarding your property?
23 A. Both abutters have been annexing my property,
24 be it the -- or, actually, all three of them

| | |
|--|---|
| <p style="text-align: right;">Page 172</p> <p>1 now: the Town, Brooke Newman, and the yacht 2 club. They refused to go back to their 3 property lines. 4 Q. How do you believe the politics in Lebanon and 5 Israel affected in any way the decisions made 6 by the Town of Truro regarding your property? 7 A. They're patterning themselves after exactly 8 what's been going on, annexing of properties, 9 not respecting their own property lines. 10 Q. And are you saying that that's similar to what 11 the Israelis are doing in Lebanon? 12 A. Sure. They've gone into Lebanon. 13 Q. And you think that because the Israelis have 14 gone into Lebanon, your property -- the 15 abutters to your property have encroached on 16 your property? 17 A. Doing the same thing. 18 Q. Do you have any -- have any statements ever 19 been made to you by anyone who was on a board 20 of the Town of Truro or is an employee of the 21 Town of Truro regarding the relationship 22 between Israel and Lebanon? 23 A. It's their actions. 24 Q. Has anyone made any specific comments to you</p> | <p style="text-align: right;">Page 174</p> <p>1 Correct? 2 A. Yes. 3 Q. Okay. What evidence do you have that any of 4 the decisions made by members of the boards of 5 the Town of Truro, an employee of the Town of 6 Truro were based on the fact that you were 7 Lebanese? 8 A. We've lived in the town for 21 years, had 9 absolutely no problems until we went down 10 there. And when we bought the property, people 11 started talking. 12 Q. Who started talking? 13 A. The Harbor Commission people. 14 Q. Which specific individual on the Harbor 15 Commission began talking when you purchased the 16 property? 17 A. There was one -- somebody -- I think it was a 18 woman -- and one of the selectmen. 19 Q. And what did they say? 20 A. Oh. Look what the Allens fell into. And our 21 property that we had bought, nobody realized 22 that we had been living in the town for years 23 and years before that. We got our permit for 24 our floats. We were charged seven times --</p> |
| <p style="text-align: right;">Page 173</p> <p>1 concerning the politics of Lebanon and Israel? 2 A. No. 3 Q. Has anyone made any specific comments to you 4 regarding your answers to the -- as being 5 Lebanese? 6 A. No. 7 Q. Is it your belief that all Jews would 8 discriminate against Lebanese? 9 A. All? 10 Q. Yes. 11 A. No. 12 Q. Okay. Which Jews that are on a board of the 13 Town of Truro or employed by the Town of Truro 14 do you believe discriminated against you 15 because you are Lebanese? 16 A. That's it. The selectmen. 17 Q. And which specific individual? 18 A. Most of the boards are composed of peoples 19 (sic) who are treating us totally differently 20 than everybody else. 21 Q. But Ms. -- 22 A. And -- 23 Q. Ms. Cordi-Allen, your claim is that you've been 24 discriminated against because you are Lebanese.</p> | <p style="text-align: right;">Page 175</p> <p>1 Q. Ms. Cordi-Allen, I'm asking you a specific 2 question. Listen to my question. Have -- 3 well, you claim that the Town of Truro and the 4 members of its board have discriminated against 5 you -- 6 A. Uh-huh. 7 Q. -- in making decisions concerning your property 8 because you are Lebanese. Correct? 9 A. Yes. 10 Q. And I'm asking you specifically what evidence 11 you have that the decisions made by specific 12 board members concerning your property were 13 based on the fact that you are Lebanese versus 14 based on some other reason that they might have 15 had to make those decisions. What specific 16 evidence do you have? 17 A. When we went for permits, as I said, we were 18 granted our permits, but charged seven times 19 that as the yacht club. We have been told 20 by -- 21 Q. Let me stop you there. 22 A. -- the town counsel -- 23 Q. Let me -- 24 A. Yeah.</p> |

| Page 176 | Page 178 |
|--|---|
| <p>1 Q. -- let me stop you there. The yacht club. Why 2 do you believe the yacht club was granted 3 permits and not you? Because you were 4 Lebanese? 5 A. Definitely. 6 Q. And why would they grant -- was the yacht club 7 Jewish? 8 A. Yes. Most of them are. Many of them are. 9 Q. Who? 10 A. Who? There are people that were at the 11 previous meetings at DEP who were. Their names 12 are in your documents. I don't know their 13 names. But they were -- 14 Q. Do you have any evidence that they were granted 15 their permits because they were Jewish versus 16 for another rea- -- other than another reason? 17 A. If you're in the same location and you're -- 18 you've been established in town, you're in the 19 same -- what's the word -- like habitat, 20 whatever, you know, affecting everything. And 21 the only difference between you and your 22 abutters is because you're one thing; they're 23 something else. And that's the only 24 difference; 'cause --</p> | <p>1 MR. REVERE: Okay. Well, I -- 2 MS. ECKER: -- of questioning. 3 MR. REVERE: -- I could object that they 4 were asked and answered in the previous 5 deposition. But since -- but since we had 6 problems in the previous deposition, I 7 didn't -- 8 MS. ECKER: Well, you really can't -- 9 MR. REVERE: Okay. 10 MS. ECKER: -- because I never got an 11 answer. 12 MR. REVERE: Okay. 13 MS. ECKER: It's a -- 14 MR. REVERE: No. 15 MS. ECKER: -- very serious -- 16 MR. REVERE: No, no. 17 MS. ECKER: -- claim she's bringing. 18 MR. REVERE: Oh, I -- I know. No. I'm 19 just saying -- I'm just a little concerned that 20 she answered the question. I know what she 21 answered in the previous deposition. 22 MS. ECKER: As do I. 23 MR. REVERE: Okay. And I know what she has 24 said now. And they are slightly different.</p> |
| Page 177 | Page 179 |
| <p>1 Q. You don't think -- 2 A. -- they're granted, without any problems, their 3 permits. When we go to the same boards, we're 4 told we have to go through certain procedures. 5 Yet people like Brooke Newman, no, walk. 6 Q. Do you know if Brooke Newman's actually Jewish? 7 A. I've been told she has -- she is. 8 Q. Who told you that? 9 A. People who know her, people who have been -- 10 Q. Specifically, who told you Brooke Newman's 11 Jewish? 12 A. Townspeople. 13 Q. And you can't tell me a specific individual? 14 A. I just hear things that, when I got to Jams 15 uptown, people that know the family. 16 Q. Other than her surname, do you have any 17 evidence that she's Jewish? 18 A. I've been told by somebody that she does have 19 religious -- Jewish religious things in her 20 house. 21 MR. REVERE: Can we go off the record for 22 just a second? 23 MS. ECKER: No. I want to continue this 24 line --</p> | <p>1 But given the reason the previous deposition 2 was cancelled, I'm giving you lots of leeway. 3 But I just want to note at the moment, as we're 4 talking about this, that I'm aware these -- 5 these are questions, some of which were 6 previously answered. Let's just -- 7 MS. ECKER: I know. 8 MR. REVERE: -- go on. 9 MS. ECKER: Let's -- 10 MR. REVERE: Okay. 11 MS. ECKER: -- continue, Paul. I -- 12 MR. REVERE: Yeah. 13 MS. ECKER: -- note your -- I note your 14 objection. I disagree. 15 MR. REVERE: Yeah. Well, I just -- I don't 16 think it's any reason to stop. I just think 17 that -- 18 MS. ECKER: I note your objection. 19 MR. REVERE: Okay. 20 Q. Are you aware that town counsel, who was here 21 at the last day of your deposition, Sarah -- 22 Sarah Turano-Flores, has been giving the Town 23 advice concerning your property over the years? 24 A. I don't know that she was working there when we</p> |

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1 bought the property. I don't know how long
 2 she's been there.
 3 Q. Have you ever seen letters written by either
 4 Ms. Turano-Flores or her law firm concerning
 5 your property to the Town?
 6 A. Yes.
 7 Q. Okay. And you're aware that she has been
 8 advising the Town concerning applications and
 9 other requests you've made regarding your
 10 property over the years?
 11 A. At some times.
 12 Q. Okay. Do you believe that Ms. Flores is biased
 13 against you because the decisions or the
 14 opinions she's given the Town because you are
 15 Lebanese?
 16 A. I believe she's been told.
 17 Q. That you're Lebanese?
 18 A. I believe -- okay. What I know is that the
 19 town manager has told the committees not to
 20 even talk to us, be it Zoning, Conservation
 21 Commission, the Harbor Commission, the
 22 harbor master. They were told by the town
 23 manager not to even talk to us. And that's
 24 documented.

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1 Q. Listen to my question. Do you believe that
 2 Ms. Turano-Flores has discriminated against you
 3 in the recommendations or opinions she's given
 4 to the Town concerning your property because
 5 you are Lebanese?
 6 A. Has she? I think -- I -- I think she's done
 7 what they told her to do.
 8 Q. So you think she hasn't given independent
 9 advice to the Town?
 10 A. She's probably worked to -- to do what their
 11 wishes are -- were.
 12 Q. What's your evidence of that?
 13 A. Inconsistencies in treatment of peoples.
 14 Q. By Ms. Turano-Flores?
 15 A. I would say, if she's the one that's legally
 16 responsible for the documents on that, there
 17 is, definitely, inconsistencies.
 18 Q. And you believe that she's been inconsistent
 19 because of your national origin?
 20 A. I think she's told what to do.
 21 Q. By whom?
 22 A. By whoever's paying her.
 23 Q. So you believe that the Town has told her the
 24 legal opinions to give them?

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1 A. The direction.
 2 Q. Okay. And who do you believe has told her
 3 that?
 4 A. Well, people who run the purse strings of the
 5 town.
 6 Q. Which are who?
 7 A. The yacht club.
 8 Q. Okay. So who specifically at the yacht club do
 9 you believe that's told Ms. Turano-Flores the
 10 directions her legal opinion should -- should
 11 take?
 12 A. They run the purse strings of the town. They
 13 sit on -- the selectmen. They sit on the
 14 Zoning Board. They sit on the Harbor
 15 Commission. They run the town manager, as was
 16 in the newspaper.
 17 Q. Who specifically on the yacht club -- or from
 18 the yacht club do you -- have you testifying --
 19 has talked to Ms. Turano-Flores and directed
 20 her legal opinions that she has given to the
 21 Town?
 22 A. They -- they do it through their boards,
 23 through the boards of the town.
 24 Q. I know. Who -- who does it? I need

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1 individuals.
 2 A. Who does it? Oh, Nick Brown, for one --
 3 Q. Okay.
 4 A. -- and whoever else is there. He was president
 5 of the Harbor Commission. And ...
 6 Q. So you believe Nick -- Nick Brown has told
 7 Ms. Turano-Flores the direction to take in this
 8 matter or the -- regar- -- concern- --
 9 decisions concerning your property?
 10 A. I -- I wouldn't doubt that he, the yacht club
 11 members, and the other people that he's
 12 affiliated with and members of the yacht club
 13 who are on the various other committees express
 14 what they want to the town manager, who, I
 15 believe, is the one who contacts the lawyer.
 16 So it's like an indirect process of getting
 17 what you want done. And if you don't do what
 18 they want, you don't get a raise; or you will
 19 lose your job.
 20 Q. So do you believe that Ms. Turano-Flores has
 21 simply done what the Town has asked her to do?
 22 A. Yes.
 23 Q. And that she hasn't rendered independent legal
 24 advice to the Town?

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1 A. It's not consistent. So I would say it's
 2 not --
 3 Q. Do you believe --
 4 A. -- it's not consistent.
 5 Q. And do you believe that Ms. Turano-Flores, in
 6 giving the advice to the Town concerning your
 7 property, has discriminated against you?
 8 A. Has she? Since there are inconsistencies, yes.
 9 Q. Do you think she's discriminated against you
 10 because you're Lebanese?
 11 A. She's done it because of what the Town wants
 12 her to do.
 13 Q. Okay. Continuing on in your answer to
 14 Interrogatory No. 5 --
 15 A. Uh-huh.
 16 Q. -- you say, "It is Ms. Cordi-Allen's contention
 17 that within the town of Truro a significant, if
 18 not controlling, number of members of the
 19 Conservation Commission, Zoning Board of
 20 Appeals, and town government are members of the
 21 Jewish religion and that they apply different
 22 standards for non-Jews than for Jews." So so
 23 far, you've told me Nick Brown. Do you believe
 24 Mr. Brown is Jewish?

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1 A. No.
 2 Q. What members of the -- what controlling number
 3 of members of the Conservation Commission do
 4 you believe are Jewish?
 5 A. The -- the chairman. And I'm sure there are
 6 other people there. I don't even know who's --
 7 the names of the people. But ...
 8 Q. How do you know they're Jewish?
 9 A. Their names --
 10 Q. Okay. So --
 11 A. -- usually reflect it.
 12 Q. Okay. So you go by the person's surname to
 13 determine whether they're Jewish?
 14 A. That's usually one. And then people will tell
 15 you which would in- -- you know, they would
 16 know if they go to their -- it's a small town.
 17 They know if they go to the local churches or
 18 not or ...
 19 Q. Is there a synagogue in town?
 20 A. No.
 21 Q. Do you have any evidence that any of the
 22 members of the Conservation Commission took
 23 your national origin into account when they
 24 made decisions concerning your property?

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1 A. Just their inconsistencies.
 2 Q. No comments by any of them about your national
 3 origin?
 4 A. Not to my face.
 5 Q. Okay. No written documentation from any of
 6 them that you're aware of that they took your
 7 national origin into account?
 8 A. No.
 9 Q. So it's only that they made a different
 10 decision on -- for -- for your property versus
 11 somebody else's?
 12 A. Yes.
 13 Q. Okay. So is it your contention that any
 14 negative decision that was made concerning your
 15 property or any denial of any application must
 16 be because you're Lebanese?
 17 A. It's -- being that we're taxpayers, there is no
 18 reason that we would be treated differently,
 19 being in the same dune that everybody else --
 20 the Town has said everybody down there is in a
 21 dune. The whole area, the Town has declared
 22 dune. But only us -- only the Cordi-Allens.
 23 And I've been raised 99 percent of my life
 24 as a hundred-percent Lebanese person. My

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1 father died when I was a kid. So I was raised
 2 by my mother. And the only difference being
 3 that we were all in the same environment. And
 4 I'm treated differently.
 5 You know, if -- if it was because you lived
 6 down in the Harbor area, then everybody should
 7 have been treated different. But there should
 8 have been a consistent, different treatment.
 9 And that's not what occurred. It's only
 10 occurred for me. And they always say Barbara
 11 Cordi-Allen. My husband owns the property as
 12 well. But everybody is like, there she is.
 13 Q. Is your husband Lebanese?
 14 A. No.
 15 Q. Do you know any members of the Board of -- on
 16 the Zoning Board of Appeals who are Jewish?
 17 A. I don't know who's on it --
 18 Q. Are you aware whether any --
 19 A. -- right now.
 20 Q. Are you aware whether any members of the Zoning
 21 Board of Appeal who denied your appeal of the
 22 building inspector's decision not to revoke
 23 Ms. Newman's building permit were Jewish?
 24 A. It's what the Town tells them to do.

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1 Q. That's -- my question is, do you know whether
2 any members of the Zoning Board of Appeals who
3 denied your appeal requesting that the building
4 inspector's decision not to revoke Ms. Newman's
5 building permit were Jewish?
6 A. I've been told that the boards were, basically,
7 all run by Jewish people from various people.
8 And --
9 Q. Well, let's flip to the cap- --
10 A. -- to say the specific --
11 Q. Let's flip to the caption on the first page.
12 'Cause you have sued the individual members of
13 the Zoning Board of Appeals.
14 A. Uh-huh.
15 Q. And there are Joseph Conlon --
16 A. Uh-huh.
17 Q. -- Arthur Hutlin, Norman H. Pope, Keith
18 Althaus, and Marinna Matricardi. Do you know
19 if any of those individuals are Jewish?
20 A. No. I don't know them.
21 Q. Do you have any evidence that any of those
22 individuals that you have sued as members of
23 the Zoning Board of Appeals took your national
24 origin into account when they denied your

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1 A. Only that they have -- the Pamet Yacht Club
2 members have been told that we own half the
3 harbor; we're going across the harbor; we're
4 stopping the yacht club from navigation. And,
5 with that, they've gotten their members to band
6 together to go against us. And none of that
7 was true. And they have gone to the boards to
8 stop us.
9 Q. Do you have any evidence -- I'm asking you a
10 very specific question -- any evidence that any
11 of these individuals that you've sued --
12 Mr. Conlon, Mr. Hutlin, and Mr. Pope,
13 Mr. Althaus, and Ms. Matricardi -- were
14 influenced in any way by members of the Pamet
15 Yacht Club when they were reviewing your
16 application on appealing the building
17 inspector's denial of your request to revoke
18 Ms. Newman's building permit?
19 A. The inconsistent treatments --
20 Q. Which --
21 A. -- like I said.
22 Q. Which individual? I'm just -- each individual
23 votes; you understand that. Correct?
24 Mr. Conlon --

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1 appeal?
2 A. Again, the people who sit on those committees
3 are told what to do.
4 Q. Let's start with Mr. --
5 A. And --
6 Q. -- Mr. Conlon. Who told Mr. Conlon what to do
7 as regards the appe- -- your appeal that was
8 before him?
9 A. Who told him?
10 Q. Yes.
11 A. The -- like I said, the Pamet Yacht Club
12 members -- and it's known in town -- sit on the
13 boards. They have -- it's -- it's a small
14 town. And it's known that what they want, they
15 get.
16 Q. Are any of the individuals that you have sued
17 as members of the Zoning Board of Appeals --
18 Mr. Conlon, Mr. Hutlin, Mr. Pope, Mr. Althaus,
19 and Ms. Matricardi -- members of the yacht
20 club?
21 A. I don't know.
22 Q. Do you have any evidence that anyone from the
23 yacht club in- -- in- -- influenced the vote of
24 any of those individuals that you've sued?

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1 A. Usual- -- usually, in most towns, whoever is
2 the chairman, people follow. So you only --
3 you don't necessarily need to call all of them.
4 You could talk to one of them, two of them,
5 whatever. But you can get -- I'll -- I'll give
6 you a specific example --
7 Q. No. I really --
8 A. -- if you want.
9 Q. -- I want -- no. I want to stick -- I have a
10 very specific question. You have filed a
11 lawsuit against these members of the Zoning
12 Board of Appeals --
13 A. Uh-huh.
14 Q. -- claiming that they discriminated against you
15 when they denied your request to overturn the
16 building inspector's decision not to revoke
17 Ms. Newman's building permit. And I'm asking
18 you, do you have any evidence that Mr. Conlon's
19 vote -- and he voted on this. Correct? He
20 voted on your a- -- your appeal?
21 A. According to this, these are the people that
22 did.
23 Q. Okay. Do you have any evidence that Mr. Conlon
24 was influenced in any way by any member of the

7 (Pages 188 to 191)

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1 yacht club when casting his vote?
 2 A. Just the inconsistent actions and
 3 nonenforcement of Truro's determinations.
 4 Q. Do you have any evidence that Mr. Hutlin was
 5 influenced in any way?
 6 A. Again, the inconsistencies and their disregard
 7 for Truro's determination of the environment
 8 and improper permits and inconsistent...
 9 Q. Do you have any evidence that anyone from the
 10 yacht club spoke to the individuals that you
 11 have sued concerning your appeal?
 12 A. Based on behaviors. Or when the fees were
 13 installed on us for our floats being seven
 14 times that of the yacht club.
 15 Q. I'm focusing specifically on the decisions --
 16 A. That --
 17 Q. -- made by the --
 18 A. I'm --
 19 Q. -- Zoning Board.
 20 A. -- answering the question.
 21 Q. Okay.
 22 A. Based on the performance of the Harbor
 23 Commission to charge us seven times that of the
 24 yacht club because they all sat on the

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1 committee. And they -- we were told -- in
 2 fact, I was told by the harbor
 3 commissioner that the yacht club controls
 4 what's going on and that our floats -- they
 5 charged us \$2,100; and the yacht club was \$300
 6 for the same floats.
 7 In fact, they didn't even have a permit or
 8 a license for their float system; and we had
 9 gone through the process. Yet we get slapped.
 10 Nothing happens to anybody else down there.
 11 Just total inconsistent dealings. The Truro
 12 Zoning Board of Appeals did not go through the
 13 proper process. They did not review the
 14 documents. They did not review that this is a
 15 dune as determined by the Town of Truro.
 16 Fill was brought in on Ms. Newman's
 17 property. Plantings were brought in. A full
 18 basement was put in. And it's a dune. But --
 19 and she probably is not -- doesn't even have a
 20 setback. She has a three-bedroom septic. She
 21 has a two-bedroom restriction. But
 22 everything's fine and hunky-dory for Brooke
 23 Newman. But the Allens, forget them.
 24 Q. I'm focusing specifically on the Zoning Board

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1 of Appeals. Any evidence that you have that
 2 any of the individuals that you have sued spoke
 3 with anybody from the yacht club concerning how
 4 to vote on your appeal?
 5 A. Just the inconsistent treatments and being told
 6 that the yacht club controls the Town.
 7 Q. So you have no evidence that any statements
 8 were made by members of the yacht club to the
 9 Zoning Board of Appeals directing them how to
 10 vote?
 11 A. No.
 12 Q. Going back to your answer to No. 5, is it your
 13 understanding that the members of the various
 14 boards -- the Zoning Board of Appeals, the
 15 Conservation Commission, the Harbor
 16 Commission -- changed over periods of time?
 17 A. They do change. Yes.
 18 Q. And is it your contention that, regardless of
 19 the makeup of those boards since you've owned
 20 the property, all the members of those boards
 21 have discriminated against you because you're
 22 Lebanese?
 23 A. I think -- I've been told people are afraid to
 24 stand up and say anything in town because of

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1 what would happen to them.
 2 Q. And who told you that?
 3 A. Various townspeople said, We can't even go to
 4 meetings; because if we open up our mouth,
 5 we'll get harassed by the police department.
 6 Q. Who told you that?
 7 A. A family, they were doing work on our house.
 8 Joseph's Trash.
 9 Q. And does Mr. Trash live in Truro?
 10 A. No, no, no. Joseph's Trash Removal. That's --
 11 that's what --
 12 Q. Oh, trash removal?
 13 A. -- they do. That's a company. Yes.
 14 Q. And they've told you that if they attended
 15 meetings, they would be harassed by the police
 16 department?
 17 A. Yes.
 18 Q. If they attended meetings in your favor. Is
 19 that your testimony?
 20 A. They would not go. They said, We can't go
 21 because we will be harassed.
 22 Q. Do you know if they've ever been harassed by
 23 the Truro Police Department?
 24 A. I believe they have been.

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- 1 Q. Okay. Have -- when have they been harassed by
2 the Truro Police Department?
- 3 A. I -- I don't know. But I do know that they
4 said that they will get harassed; they'll get
5 tickets. And it's happened. So...
- 6 Q. Do you have any -- well, strike that. Have you
7 ever been harassed by anybody in the Truro
8 Police Department?
- 9 A. I don't bother with them. So I've had no real
10 dealings with them outside of calling them when
11 we found drugs when we bought the property down
12 there and getting a "no trespass" order because
13 our trash was being taken and --
- 14 Q. Your trash --
- 15 A. -- moved --
- 16 Q. -- was being taken? Or your trash cans were
17 being taken?
- 18 A. The trash cans, the trash in the trash cans.
19 The whole thing, with the trash in it, was
20 being taken.
- 21 Q. Who do you -- who do you believe was taking
22 your trash?
- 23 A. Brooke Newman.
- 24 Q. Why do you believe Brooke Newman was taking

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- 1 your trash?
- 2 A. People in -- in our house told us. And --
- 3 Q. Why would she want your trash?
- 4 A. She said that it was not on our -- it was not
5 on our property, that she owned the property;
6 or it was a street or something --
- 7 Q. So she moved the --
- 8 A. -- the dr -- the driveway.
- 9 Q. She moved your trash cans. Correct?
- 10 A. We found -- we found trash out in the yacht
11 club's woods. So it wasn't -- it was taken.
- 12 Q. And you believe that Ms. Newman took the trash
13 from your trash cans and spread it in the woods
14 behind the yacht club?
- 15 A. It wound up over there. They came over and
16 told us. They said, This is your trash over
17 here. And --
- 18 Q. Do you have any --
- 19 A. -- the contents of that came from our property.
- 20 Q. Do you have any evidence that Brooke Newman
21 took your trash and spread it in the woods
22 behind the yacht club?
- 23 A. Just from her behavior of taking our trash. No
24 one else has touched our trash but her.

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- 1 Q. Did you file a Complaint against Ms. Newman?
- 2 A. Yes.
- 3 Q. And what happened to that Complaint?
- 4 A. She has a "do not trespass" order.
- 5 Q. When you say the yacht club and Brooke Newman
6 have encroached on your -- annexed your
7 property --
- 8 A. Uh-huh.
- 9 Q. -- have you brought a lawsuit against them for
10 annexing your property?
- 11 A. My lawyer has sent letters, and my past lawyers
12 have sent letters to them to remove the fences.
13 And they have not done so.
- 14 Q. Have you had your property surveyed?
- 15 A. Yes.
- 16 Q. And do you have a copy of that survey?
- 17 A. It should be in the files.
- 18 Q. Okay. And does that survey show that, in fact,
19 Ms. Newman is encroa- -- has --
- 20 A. Yes.
- 21 Q. -- annexed your property?
- 22 A. Yes. In fact, the property pins are there now.
23 They're -- it's staked off now.
- 24 Q. And does Ms. Newman agree with you that she's

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- 1 annexed your property?
- 2 A. My lawyers that found -- the one that found
3 it --
- 4 Q. Okay.
- 5 A. -- and brought it out at a -- a site visit
6 said, Who's that? Whose are those? And he
7 said, This is a property line when they marked
8 it off. And he saw that the fence was not on
9 her property line; it was in the driveway.
- 10 Q. Has she agreed to move it?
- 11 A. No. Of course not.
- 12 Q. Because she doesn't agree that she's on your
13 property.
- 14 A. No.
- 15 Q. Correct?
- 16 A. No. Right.
- 17 Q. So she doesn't agree with you. It's your
18 contention that she's annexed the property.
19 Correct?
- 20 A. It's everybody's contention. The -- the --
- 21 Q. But Brooke Newman. Right?
- 22 A. Everybody, her lawyers included, agree that
23 it's not on her property.
- 24 Q. How has the yacht club annexed your property?

| Page 200 | Page 202 |
|--|---|
| <p>1 A. They have a fence 4 feet on our property, and 2 they've removed our property marker. 3 Q. Have you brought a Complaint against them? 4 A. Yeah. 5 Q. Okay. And is that pending? 6 A. A letter's been sent, and they've done nothing 7 about it. 8 Q. Has it been filed in court, the Complaint? 9 THE WITNESS: I don't know if you did. Did 10 you, Paul? 11 Q. That's all right. I'll ask him at another 12 time. Ms. Cordi- -- 13 A. I think that's part of the -- 14 MR. REVERE: Yeah. Off -- off the record. 15 (A brief discussion was held off the 16 record.) 17 MS. ECKER: I'm going to mark another 18 document. 19 (Subdivision Plan of land in Truro marked 20 as Cordi-Allen Exhibit No. 9.) 21 Q. I'm going to ask you -- 22 MS. ECKER: It's Exhibit 9? 23 COURT REPORTER: Yes. 24 Q. I'm going to ask you to look at what's been</p> | <p>1 your property is closer to the harbor? 2 A. Yes. 3 Q. Okay. And Ms. Newman's structure is -- is much 4 further back from your -- your -- from the 5 water. Correct? 6 A. Not that much further. 7 Q. Would you agree that there's a hundred-foot 8 buffer between Ms. Newman's property and the 9 water line? 10 A. Yes. 11 MR. REVERE: Can -- can we go off the 12 record -- 13 MS. ECKER: No. 14 MR. REVERE: -- for a second? 15 MS. ECKER: We can't. 16 MR. REVERE: Okay. 17 MS. ECKER: I'm -- Paul, let me finish with 18 this line of questioning. I don't want any 19 speeches by you. 20 MR. REVERE: No. No, no, no, no. You -- 21 you're going down a number of questions that 22 border on -- 23 MS. ECKER: They're -- 24 MR. REVERE: -- opinion expert testimony.</p> |
| Page 201 | Page 203 |
| <p>1 marked as Exhibit 9 and ask if you recognize 2 it. 3 A. It's a 1972 plan. 4 Q. And is that the plot plan for the properties 5 where your house is located, Ms. Newman's, and 6 Ms. Landis? 7 A. It's 35 years old. 8 Q. You don't recognize -- 9 A. There's more -- there's -- I don't know if this 10 is accurate. There are more up-to-date ones. 11 Q. Looking at what's been marked as Exhibit 9, did 12 you purchase the parcel that is represented as 13 C -- 14 A. Yes. 15 Q. -- on this? Okay. And are you aware whether 16 Ms. Newman's property is what's marked as 17 Exhibit -- as B on this plan? 18 A. Yes. 19 Q. And Ms. Landis is Exhi- -- is Parcel A. 20 Correct? 21 A. Yes. Uh-huh. 22 Q. Okay. Looking at this property, which -- this 23 plan that's marked as Exhibit 9, would you 24 agree with me that your -- the structure on</p> | <p>1 And I just wanted to clarify whether you 2 consider that or -- an objection to form. 3 MS. ECKER: It is not an objection to form. 4 MR. REVERE: Okay. At least, if you 5 considered it such -- 6 MS. ECKER: It's not. 7 MR. REVERE: Okay. I -- I think you can 8 ask her questions about knowing her properties. 9 Just if we -- 10 MS. ECKER: Yes. 11 MR. REVERE: -- get into expert, she should 12 know about her property in many -- okay. 13 That's all. 14 Q. Does Ms. Landis' structure have a hundred-foot 15 buffer from the water line? 16 A. Yes. 17 Q. Okay. And yours does not. Correct? 18 A. Right. Oh, I don't -- wait a minute. Mine's 19 close. 20 MS. ECKER: I'm going to mark another 21 exhibit. 22 (Plot Plan marked as Cordi-Allen Exhibit 23 No. 10.) 24 Q. Ms. Cordi-Allen, I'm going to show you what's</p> |

| Page 204 | Page 206 |
|---|---|
| <p>1 been marked as Exhibit 10 and ask if you</p> <p>2 recognize that document.</p> <p>3 A. Yes.</p> <p>4 Q. Okay. And is that the proposed changes you</p> <p>5 seek to make to your property?</p> <p>6 A. Yes.</p> <p>7 Q. How -- when you purchased the property, what</p> <p>8 square footage was the structure on the</p> <p>9 property?</p> <p>10 A. Four- or five-hundred feet.</p> <p>11 Q. And in the proposed changes that appear in</p> <p>12 Exhibit 10, what is the additional amount of</p> <p>13 square footage you seek to add to your</p> <p>14 property?</p> <p>15 A. I don't know. I haven't figured it out.</p> <p>16 Q. Do you know how --</p> <p>17 A. I haven't calculated it.</p> <p>18 Q. Do you know how large the structure is that you</p> <p>19 wish to add to the property?</p> <p>20 A. The dimensions.</p> <p>21 Q. Okay. What are the dimensions?</p> <p>22 A. Forty-two by thirty-six.</p> <p>23 Q. And you don't know what that square footage is?</p> <p>24 A. Let's see. It's about 2,800 feet, square feet,</p> | <p>1 Q. And on the -- what's Ex- -- is Exhibit 10,</p> <p>2 there was an original structure. Correct? And</p> <p>3 you wish to construct an additional structure,</p> <p>4 correct, a proposed dwelling?</p> <p>5 A. Yes.</p> <p>6 Q. Okay. So the completion of -- if you were</p> <p>7 allowed to go ahead and complete the</p> <p>8 construction, there would be two structures on</p> <p>9 your property now. Correct?</p> <p>10 A. One's considered, again, accessory building.</p> <p>11 One's a house.</p> <p>12 Q. And the house would be what? The original</p> <p>13 structure or the new --</p> <p>14 A. No.</p> <p>15 Q. -- structure?</p> <p>16 A. This is -- this is where we are going to live</p> <p>17 permanently.</p> <p>18 Q. And that is the proposed dwelling as marked --</p> <p>19 A. Right.</p> <p>20 Q. -- on Exhibit 10. Correct?</p> <p>21 A. Correct.</p> <p>22 Q. And that structure does not exist today.</p> <p>23 Correct?</p> <p>24 A. Right.</p> |
| Page 205 | Page 207 |
| <p>1 for the house.</p> <p>2 Q. And in looking at this that's been marked as</p> <p>3 Exhibit 10, you seek to install an in-ground</p> <p>4 pool on the property?</p> <p>5 A. No.</p> <p>6 Q. Not anymore? Or was that an aboveground pool?</p> <p>7 A. Aboveground.</p> <p>8 Q. And do you seek to install an underground</p> <p>9 garage?</p> <p>10 A. No.</p> <p>11 Q. Okay. Is it a garage that is attached to the</p> <p>12 structure?</p> <p>13 A. Yes.</p> <p>14 Q. And when you say aboveground, do you mean that</p> <p>15 no concrete would need to be poured for the</p> <p>16 pool?</p> <p>17 A. I'm not an installer. I don't know how they</p> <p>18 install pools. But I -- there was not going to</p> <p>19 be -- I wasn't digging -- you know, you dig for</p> <p>20 an in-ground pool 10 feet or whatever. We're</p> <p>21 not going to do that. It would be on the deck.</p> <p>22 Q. So the pool that is depicted in Exhibit 10</p> <p>23 would be on a deck structure?</p> <p>24 A. Uh-huh.</p> | <p>1 Q. And that structure consists of approximately</p> <p>2 how many square feet? Do you know?</p> <p>3 A. I think it's about 2,800 square feet.</p> <p>4 Q. Do you know anyone else in the town of Truro</p> <p>5 who has been allowed to build a 21-square-foot</p> <p>6 (sic) home this close to the water line?</p> <p>7 A. Oh, yes.</p> <p>8 Q. Who else?</p> <p>9 A. The Perrys have; actually, theirs is maybe</p> <p>10 7,000 square foot. The Sextons have --</p> <p>11 Q. Your proposed is what? 20,000 square feet?</p> <p>12 A. No.</p> <p>13 Q. 2,000?</p> <p>14 A. This is about 2,800.</p> <p>15 Q. And where is -- okay. Where is the Perrys'</p> <p>16 house located?</p> <p>17 A. Of the beach -- on the beach.</p> <p>18 Q. Is it on the beach?</p> <p>19 A. Yeah.</p> <p>20 Q. And what's their setback from the water line?</p> <p>21 A. I don't know.</p> <p>22 Q. Do you know if the Perrys' home is located in a</p> <p>23 flood plain?</p> <p>24 A. Yes.</p> |

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| <p style="text-align: right;">Page 208</p> <p>1 Q. Okay. Who told you that?</p> <p>2 A. The whole environment is.</p> <p>3 Q. Has anyone told you that the Perrys' house is</p> <p>4 located in a flood plain?</p> <p>5 A. Yes.</p> <p>6 Q. Who?</p> <p>7 A. Townspeople.</p> <p>8 Q. Anyone --</p> <p>9 A. And I'm not sure if it was the -- I'm not sure</p> <p>10 if Felco said something. And I -- I shouldn't</p> <p>11 even -- I can't mention their name. I'm not</p> <p>12 sure if they also said it. But their abutters</p> <p>13 have their houses on pilings. Theirs is not.</p> <p>14 Q. Do you know when the Perrys' home was</p> <p>15 constructed?</p> <p>16 A. Oh, it's still being done.</p> <p>17 Q. And do you know what the setback is?</p> <p>18 A. No. I don't. I think --</p> <p>19 Q. Do you know if they had to go to the</p> <p>20 Conservation Commission to get approval?</p> <p>21 A. I don't think they did.</p> <p>22 Q. Do you know if they had to go to the Zoning</p> <p>23 Board of Appeals to get approval?</p> <p>24 A. No. I don't think they did.</p> | <p style="text-align: right;">Page 210</p> <p>1 Q. Any properties you -- well, let me ask you</p> <p>2 this: You claim that you have been treated</p> <p>3 differently from properties similarly situated</p> <p>4 to your own. Correct?</p> <p>5 A. Yes.</p> <p>6 Q. What properties are you claiming are similarly</p> <p>7 situated to your own that received approval to</p> <p>8 construct when you did not?</p> <p>9 A. Well, the Sexton property is definitely on a</p> <p>10 dune where, in a wind, they're going to fall in</p> <p>11 the water. They're -- they're on top of the</p> <p>12 water. They just built a 7,000-square-foot</p> <p>13 house, at least.</p> <p>14 Q. Where's the Sexton property?</p> <p>15 A. Facing the water to the left. And all those --</p> <p>16 those homes there, all the ones -- yeah.</p> <p>17 Facing out to the bay to the left, Nick Brown's</p> <p>18 house and all those there, they are huge. And</p> <p>19 I had the square footage of all those. They're</p> <p>20 quite large. And a little bit further down is</p> <p>21 the Sextons' property. And I know that's in</p> <p>22 the documents. And that's -- it was in the</p> <p>23 paper. It's over 7,000 square feet.</p> <p>24 Q. And is it your contention that those properties</p> |
| <p style="text-align: right;">Page 209</p> <p>1 Q. Do you know if they had to go to the Board of</p> <p>2 Health to get approval?</p> <p>3 A. I don't think they did. I don't -- I don't</p> <p>4 really remember. But I have -- I think I have</p> <p>5 the documents somewhere.</p> <p>6 Q. And they had to get a building permit.</p> <p>7 Correct?</p> <p>8 A. I would assume.</p> <p>9 Q. Do you know if the Perrys are Jewish?</p> <p>10 A. No. They're not.</p> <p>11 Q. Okay. Anybody else in town that you're aware</p> <p>12 of who was allowed to build a 21-square-foot</p> <p>13 (sic) home close to the water?</p> <p>14 MR. REVERE: Do you mean 2,100?</p> <p>15 Q. 2,100 square feet.</p> <p>16 A. Yeah.</p> <p>17 MR. REVERE: Okay.</p> <p>18 A. Zawaduk. He's behind us.</p> <p>19 Q. You have to -- what's the name?</p> <p>20 A. Z-a-w-a-d-u-k. He's behind us. His is like</p> <p>21 about 4,000 square feet.</p> <p>22 Q. And when you say he's behind you, he's further</p> <p>23 back from the water?</p> <p>24 A. Yes.</p> | <p style="text-align: right;">Page 211</p> <p>1 are similarly situated to yours?</p> <p>2 A. I think -- similar? I think they're more</p> <p>3 dangerous. They're on a dune. Mine, DEP has</p> <p>4 twice said, is not a dune.</p> <p>5 Q. And that's still pending before the DEP.</p> <p>6 Correct?</p> <p>7 A. No. DEP has determined twice already that it</p> <p>8 is not a dune.</p> <p>9 Q. And you recently had a hearing. So I'm not</p> <p>10 even going to go into the DEP issue. That's</p> <p>11 still pending. Are those pro- -- those</p> <p>12 properties that you just told me about, are</p> <p>13 they as close to the water as your property?</p> <p>14 A. If not closer.</p> <p>15 Q. Which prop- -- which property that you just</p> <p>16 told me about is closer to the water than</p> <p>17 yours?</p> <p>18 A. The Sextons.</p> <p>19 Q. Okay. And is it your --</p> <p>20 A. The water comes right up to it.</p> <p>21 Q. And is it your contention that the Sextons'</p> <p>22 residence, the structure on their property, is</p> <p>23 clo- -- as close to the water as yours?</p> <p>24 A. The water comes right up to the end of the --</p> |

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|--|--|
| <p style="text-align: right;">Page 212</p> <p>1 the -- the dune. So ...</p> <p>2 Q. Is that yes?</p> <p>3 A. If that's where the property line is, yes.</p> <p>4 Q. Not where the property line is. I'm talking</p> <p>5 about the structure on the property. Is the</p> <p>6 structure that the Sextons are building or</p> <p>7 built on their property as close to the water</p> <p>8 as the structure located on your property?</p> <p>9 A. Yes.</p> <p>10 Q. Anybody else's residence you're claiming is</p> <p>11 similarly situated to yours?</p> <p>12 A. Everybody along Cape Cod Bay.</p> <p>13 Q. In the town --</p> <p>14 A. Nick Brown.</p> <p>15 Q. -- of Truro?</p> <p>16 A. In the town of Truro. Nick Brown's property</p> <p>17 and the ones facing the -- the bay. When you</p> <p>18 go out the harbor, right on the left -- I</p> <p>19 forgot the name of the street; Great Hollows</p> <p>20 (sic) Road or something like that -- all of</p> <p>21 those houses there are on a dune. And they're</p> <p>22 closer to the water than we are.</p> <p>23 And we were on -- at the time, we were on a</p> <p>24 river. And I applied before the Rivers Act,</p> | <p style="text-align: right;">Page 214</p> <p>1 is of -- of the thing -- of the river.</p> <p>2 Q. 'Cause the Conservation Commission enforces</p> <p>3 other regulations and acts other than the</p> <p>4 Rivers Act. Correct?</p> <p>5 A. Well, they're supposed to.</p> <p>6 Q. Right. So you had to go through other</p> <p>7 processes, correct, to get conservation</p> <p>8 approval other than just simply being approved</p> <p>9 for the Rivers Act. Correct?</p> <p>10 A. I think once you -- I'm not an authority on the</p> <p>11 Rivers Act and Conservation Commission. But</p> <p>12 having applied before the Rivers Act, we have</p> <p>13 to go by DEP regulations of building in the</p> <p>14 environment. And there are no consistencies.</p> <p>15 Nobody else down there does, to put it bluntly.</p> <p>16 Q. You believe that nobody else has had to comply</p> <p>17 with the Rivers Act down in the town of Truro?</p> <p>18 A. Brooke Newman sure didn't. And neither did</p> <p>19 Sandra (sic) Landis until we mentioned it, that</p> <p>20 she's in a dune. And then they made her add</p> <p>21 on. But they were letting her permit go right</p> <p>22 through.</p> <p>23 Q. And Ms. -- and Ms. Landis built her structure</p> <p>24 on pilings. Correct?</p> |
| <p style="text-align: right;">Page 213</p> <p>1 and I was grandfathered. I applied before the</p> <p>2 Rivers Act for -- to build a three-bedroom, and</p> <p>3 we were grandfathered.</p> <p>4 Q. Who told you you were grandfathered?</p> <p>5 A. The Conservation Commission --</p> <p>6 Q. So the --</p> <p>7 A. -- and DEP.</p> <p>8 Q. All right.</p> <p>9 A. DEP.</p> <p>10 Q. So the Conservation Commission for the Town of</p> <p>11 Truro agreed with you, correct, that you were</p> <p>12 grandfathered?</p> <p>13 A. And then they said to me, well, you still --</p> <p>14 you still have to go through the provisions</p> <p>15 of -- I think, at a later meeting, they said,</p> <p>16 You -- you still have to go through because --</p> <p>17 the provisions of the Rivers Act. And I'm</p> <p>18 like, We already applied before.</p> <p>19 And it was -- Jim Mahala was the one.</p> <p>20 That's who it was. He said, You're</p> <p>21 grandfathered; you applied before the Rivers</p> <p>22 Act. And even if you applied after the Rivers</p> <p>23 Act, that doesn't prevent somebody from</p> <p>24 building within a hundred feet or whatever it</p> | <p style="text-align: right;">Page 215</p> <p>1 A. After Paul objected to her being granted the</p> <p>2 permit unless it was treated as a dune.</p> <p>3 Because it -- 'cause we were being treated as a</p> <p>4 dune. And he -- he requested that we --</p> <p>5 everybody be treated the same down there.</p> <p>6 But Brooke Newman, she has a full basement.</p> <p>7 And her house is supposed to be on pilings and</p> <p>8 whatever. And, of course, nothing happens.</p> <p>9 Zoning, building inspector could care less,</p> <p>10 Con. Comm. And she did not build before the</p> <p>11 Rivers Act nor apply before the Rivers Act.</p> <p>12 She didn't even own the property then.</p> <p>13 Q. Do you believe that your house is similarly</p> <p>14 situated to Ms. Newman's house?</p> <p>15 A. We're all in the same flood plain. It's all</p> <p>16 been flooded. Everybody's.</p> <p>17 Q. Has Ms. Newman or -- I think it's now</p> <p>18 constructed -- did she add on the same amount</p> <p>19 of square footage as you seek to add to your</p> <p>20 property?</p> <p>21 A. My property is a much larger buildable area</p> <p>22 than hers. And the same with Sandra (sic)</p> <p>23 Landis. But both have built the largest</p> <p>24 structure possible within the sub acts.</p> |

| Page 216 | Page 218 |
|---|--|
| <p>1 Q. The proposed additions of Ms. Landis and 2 Ms. Newman were smaller than the proposed 3 addition that you had in your plan that's 4 marked as Exhibit 10. Correct? 5 A. They built according to their setbacks. So 6 whatever their setbacks they said allowed, 7 that's what they built. They couldn't build 8 bigger than what they had because they don't 9 own property that's buildable. They own the 10 path; it's like a pork chop. And you can't 11 build on that land. 12 Q. So the structures they proposed were smaller 13 than yours. Correct? 14 A. I don't know what Sandra (sic) Landis is. 15 But ... 16 Q. Brooke Newman's was smaller than your -- the -- 17 what you proposed in Exhibit 10. Correct? 18 A. Her property's smaller than mine. 19 Q. I'm just asking you. It's a -- it's yes -- 20 A. Yeah. 21 Q. -- or no. Yes, it's a smaller -- 22 A. Uh-huh. 23 Q. -- proposal. Correct? 24 A. Yeah.</p> | <p>1 Dudley. 2 Q. And did Mr. Mahas (sic) and Mr. Dudley testify 3 on your behalf at the DEP hearing that just 4 occurred this -- I believe, this fall? 5 Correct? 6 A. No. 7 Q. Why not? 8 A. I don't know what made them flip. 9 Q. They no longer agree with you, correct, that 10 this -- that what appears in Exhibit 10 is 11 buildable? 12 A. No. I -- I can't say that. 13 Q. Have you spoken with them about it, what made 14 them flip? 15 A. I haven't asked them. No. I'm not going to. 16 Q. But it's your understanding now that they don't 17 agree with you that you can construct what's 18 depicted in Exhibit 10. Correct? 19 A. I -- if it's a dune, it has to be built on 20 pilings. This here is on a breakaway 21 foundation, and I think that's what the -- the 22 problem is now. It's not that it can't be 23 built. It's how the foundation is going to be 24 built. Because you can build. Obviously, the</p> |
| Page 217 | Page 219 |
| <p>1 Q. Is -- when you say that your property's 2 buildable, who told you that your property's 3 buildable? 4 A. Who? 5 Q. Yes. 6 A. DEP. 7 Q. Okay. And what portion of your property did 8 DEP tell you was buildable? 9 A. Right there. My plan. 10 Q. Okay. So is it your contention that DEP told 11 you that you could construct what's depicted in 12 Exhibit 10? 13 A. Yes. 14 Q. When? 15 A. When we drew up the plans. 16 Q. Okay. Who at DEP told you you could build the 17 structures, including the pool and the garage 18 and -- 19 A. Jim. 20 Q. -- everything that -- and everything that's 21 depicted -- 22 A. Jim Mahala. 23 Q. -- in Exhibit 10? 24 A. In fact, he's the one that aided me. And Brian</p> | <p>1 Sextons built a 7,000-square-foot house in a 2 coastal dune on pilings. So this is not 7,000 3 square feet; and it's not in a dune. 4 Q. So you believe that the Sextons' property -- 5 and I just want to be clear on this -- is 6 similarly situated to your own? 7 A. Similar? I think it's very dangerously 8 situated. Mine is not. 9 Q. Okay. 10 A. Theirs is on a dune where it's ready to fall 11 in. 12 Q. Did you object to the construction of the 13 Sextons' property? 14 A. No. 15 Q. You had -- did you own -- you had lived in 16 Truro or had spent your summers there prior to 17 purchasing this property. 18 A. Right. 19 Q. Correct? 20 A. Uh-huh. 21 Q. And were you looking to purchase a home? 22 A. We've gone down the harbor every time we were 23 down there, and it was our favorite spot. And 24 it was always our dream to own down there.</p> |

| | |
|--|--|
| <p style="text-align: right;">Page 220</p> <p>1 Q. And when did you first become aware that this 2 property was for sale? 3 A. Maybe 1993 -- 4 Q. And when -- 5 A. -- '92, somewhere around there. 6 Q. And when did you actually purchase it? 7 A. Well, actually, we went under contract back 8 then; and it took until 1996 to close on it. 9 Q. So you went under contract to purchase the 10 property when? In '93? 11 A. Yeah. '92 or '93, somewhere back there. 12 Q. Do you have a copy of that contract? 13 A. No. I don't. 14 Q. And who was the contract with? 15 A. Tom Brown. 16 Q. And why did it take so -- 17 A. I couldn't think of his first -- I couldn't 18 think of his first name. 19 Q. Why did it take so long to close? 20 A. They were in the process of getting the permits 21 for the well and septic. So we just said, 22 Well, you know, we're not interested right now. 23 And they kept calling us to see if we were 24 interested. And we went down there in, I think</p> | <p style="text-align: right;">Page 222</p> <p>1 testified? 2 A. We -- we pulled it. Yes. We were. And then 3 we went back under another contract -- we had 4 two contracts on that -- in the spring of '95. 5 And -- 6 Q. Why didn't the first -- 7 A. -- the house had to be finished. 8 Q. Why didn't the first contract go through? 9 A. We were waiting for them to get the septic and 10 the -- the well installed. 11 Q. And when they did -- 12 A. And they didn't have it, right, you know. So I 13 wasn't going to tie my money up with them 14 right -- you know. It's like, when you get it, 15 call us. 16 Q. Okay. And then they called you. Do you know 17 if the house was listed for some period of time 18 prior to their calling you to purchase it? 19 A. I don't know what happened in the meantime. 20 Q. When they called you in '95 and said the house 21 was ready, did you ask -- 22 A. No. They didn't call us. We went down there. 23 Q. Okay. 24 A. Yeah. Then we saw it.</p> |
| <p style="text-align: right;">Page 221</p> <p>1 it was '9- -- the spring of '95; and the house 2 was all done. It was completely remodeled. It 3 had the septic and well in. Yeah. 4 The yacht club was telling everybody that 5 it had none. And that was per the harbormaster. 6 And other people in town told us the same. 7 And -- 8 Q. That -- that the house didn't have a septic and 9 well? 10 A. Right. Right. 11 Q. And this was prior to your purchasing it? 12 A. Right. And we found out that it -- it did, in 13 fact. What the harbormaster said, Barb, that 14 house does have a septic and well; but the 15 yacht club's telling everybody it does not. 16 And -- 17 Q. And the harbormaster at the time was who? 18 A. Warren Roderick. So -- 19 Q. And did he -- 20 A. -- I don't know -- 21 Q. -- tell you -- 22 A. -- if it wasn't completed because -- or what. 23 But -- 24 Q. Well, you were already under contract, you</p> | <p style="text-align: right;">Page 223</p> <p>1 Q. Okay. And you called them? 2 A. We went up -- we went to Brown Real Estate and 3 put it under contract. 4 Q. When you went to Brown Real Estate, did you ask 5 them about the septic and well permits? 6 A. I know the house hadn't been finished yet. 7 There was some work that still needed to be 8 done on it. But it was supposed to be done -- 9 Q. Did you ask -- 10 A. -- you know, within a short frame. 11 Q. Did you ask them anything about the septic or 12 well permits? 13 A. I knew they had water, and I wasn't sure about 14 the septic. I think that they were -- I don't 15 really remember if it was completely done at 16 that time or supposedly done at that time. But 17 it had been supposedly finished when we went to 18 close. You know, it could have been being -- 19 like the loose ends like, I guess you could 20 say, being tied up at that point. 21 And then, when we went to close on the 22 property, we paid for an inspection, a house 23 inspection. And it was found that the septic 24 was never even done.</p> |

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1 Q. So the yacht -- the yacht club members were
 2 right that it didn't have a septic?
 3 A. Well, in some ways. Well, it had a permit. It
 4 was permitted. So it was done. The Town
 5 permitted it. It passed -- it passed the Board
 6 of Health. The Board of Health inspected it.
 7 Q. Okay. Did you have a conversation with
 8 Mr. Brown or anyone at Brown Realty about the
 9 property prior to your ent- -- entering into a
 10 purchase and sale agreement for it?
 11 A. Well, they knew we wanted it. We were
 12 interested in it. And --
 13 Q. Did you --
 14 A. -- we -- we went inside and looked at it. And,
 15 you know, we were very happy with it.
 16 Q. Did you ask them any questions about the house
 17 at all, the permitting process for the house?
 18 Anything?
 19 A. Yes. Nick Brown said to us, I -- I will clean
 20 up the property for you, leave the floats
 21 there. You're grandfathered for your dock. So
 22 they're still there now. So he -- he did clean
 23 up the debris from the building, you know, the
 24 construction debris; but he did leave that.

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1 And there was a boat there that was falling
 2 apart. So I told him to get rid of that.
 3 And they said, at the time, there was a
 4 one-bedroom septic in place. If -- we could
 5 add on with that septic as much as we wanted.
 6 If you wanted to build on -- add on a
 7 5,000-square-foot house, you could do it. But
 8 with the septic that was there, it -- it could
 9 only be one bedroom; but it didn't matter how
 10 big. That was it.
 11 Q. Okay. And Nick Brown told you all of that?
 12 A. Uh-huh. Yes.
 13 Q. Nick Brown told you you could add 5,000 square
 14 feet to the house if you didn't add another --
 15 A. It was --
 16 Q. -- bedroom?
 17 A. -- he and -- and I -- it was his office, the
 18 realtors there. And he --
 19 Q. Did you have a lawyer who represented you in
 20 the purchase and sale of the property?
 21 A. I had my lawyer at home do the paperwork on it.
 22 Q. Did you ever ask anyone in the Town if you
 23 could add on to that property prior to your
 24 purchase of it?

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1 A. No.
 2 Q. Did anyone from the Town of Truro ever
 3 represent to you or any members of boards that
 4 you would be able to add on to the property
 5 that you purchased?
 6 A. Well, the ad.
 7 Q. The advertisement wasn't put in there by the
 8 Town of Truro. Correct?
 9 A. It was put in by Brown.
 10 Q. My question is, did anybody from the Town of
 11 Truro, any member of the boards of the Town of
 12 Truro, ever --
 13 A. Well, Nick Brown is on the boards of Truro.
 14 Q. Mr. Brown was the realtor. Correct?
 15 A. Yes. But he's also on the boards.
 16 Q. What board?
 17 A. What boards?
 18 Q. What --
 19 A. The Harbor Commission.
 20 Q. At the time --
 21 A. He was on the Planning Board. Yeah.
 22 Q. Okay. And as a member of the Planning Board,
 23 did Nick -- Nick Brown say to you, you can add
 24 on 5,000 square feet to this house? And was

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1 that in his capacity as a realtor?
 2 A. It was through his knowledge as whatever
 3 position he had, I would say, you know. You
 4 can't separate the two. I -- he's one person,
 5 and he has different hats.
 6 Q. Anyone else from the Town of Truro ever tell
 7 you you'd be able to add on to this structure
 8 that's located on the property when you
 9 purchased it?
 10 A. I don't recall.
 11 Q. And you were aware that there was -- at the
 12 time you purchased it, you were aware there was
 13 septic for one bedroom. Correct?
 14 A. Right.
 15 Q. Prior to your purchase of it, did you ever ask
 16 anybody from the Town or research whether you'd
 17 be able to enlarge that septic system?
 18 A. Prior to our buying it or after?
 19 Q. Prior.
 20 A. No.
 21 Q. When you purchased the property, do you have --
 22 did you have plans to renovate and enlarge it?
 23 A. Yes.
 24 Q. And you did nothing to check prior to your

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1 purchase of it whether you'd be able to enlarge
2 the house?
3 A. No.
4 Q. And you weren't aware -- or let me ask you
5 this: Were you aware that there was a
6 one-bedroom restriction placed on your house
7 prior to your purchase of the house?
8 A. No. No. I think my lawyer, Bill Thomas, was
9 handling that when we started having problems
10 with the Town. And I think he did some
11 research and said that there was nothing at the
12 Registry of Deeds or something recorded.
13 Q. Did you have --
14 A. That's the best I remember.
15 Q. Do you know whether it was required that the
16 one-bedroom restriction that had been placed on
17 your house be recorded at --
18 A. Yes.
19 Q. -- the Registry?
20 A. It was. Yes.
21 Q. Other than your lawyer, how do you know that?
22 A. How do I know it? I'm not a lawyer. But my
23 lawyer --
24 Q. Don't tell me what your lawyer told you. Okay.

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1 Has anyone from the Town told you that, at the
2 time the one-bedroom restriction was placed on
3 your property, it was not required that it be
4 filed with the Registry of Deeds?
5 A. That they didn't have to record -- record it?
6 Q. Yeah.
7 A. You have to record everything. Nobody said
8 anything about that to me.
9 Q. Did you ever go to Town Hall prior to
10 purchasing the property to see if there were
11 any restrictions on the property?
12 A. No.
13 Q. And prior to purchasing this property, had you
14 looked at other similar situated properties in
15 the town of Truro to purchase?
16 A. Yeah.
17 Q. And which other properties did you look at? Do
18 you remember?
19 A. Sandra (sic) Landis's property.
20 Q. Okay. And what was the purchase price of
21 Ms. Landis' property?
22 A. It was years later. It was 200
23 something-thousand.
24 Q. I'm talking about prior to your purchasing this

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1 particular --
2 A. Oh, prior?
3 Q. Yeah.
4 A. Oh, no. That was afterwards. No. I'm sorry.
5 I misunderstood.
6 Q. How did you determine that it was a reasonable
7 price for this property that you were paying?
8 A. Well, I figured it was the most beautiful site
9 I've ever seen. And an oil painting, it would
10 cost you more than that.
11 Q. So you didn't --
12 A. And it was just -- you know, I don't know if
13 you've been down there; but it's just drop-dead
14 gorgeous.
15 Q. Did you look at any comparable sales to
16 determine the price to purchase the property?
17 A. At that point, I know it was, basically, a
18 buyer's market at that time.
19 Q. It's really -- did you look at any
20 comparable --
21 A. No.
22 Q. -- sales?
23 A. I'm saying, I just think -- you know, it was a
24 buyer's market. And I think everything, even

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1 at that time, Corn Hill was like \$80,000 a lot
2 right on the water. So, you know, we knew the
3 prices. And I think that was like, basically,
4 a fair price for what it was.
5 Q. And a fair price for the -- the one- --
6 A. The lot.
7 Q. The lot.
8 A. Yeah. You were, basically, buying the lot.
9 Q. And did anyone represent to you from the Town
10 of Truro or any members of the Town of Truro
11 boards that your lot was buildable?
12 A. Actually, Conservation Commission. I got this
13 here.
14 Q. Exhibit 10?
15 A. The Rivers Act, I applied for the Rivers Act.
16 And I'm not sure if that was through the
17 Conservation Commission or what. But I went --
18 I did get a form from somebody to build at that
19 point.
20 Q. Was that prior to your purchase of --
21 A. No.
22 Q. -- the property?
23 A. After.
24 Q. Okay. I'm talking about prior to the purchase

17 (Pages 228 to 231)

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1 of your property. Did anyone from the Town of
 2 Truro or any of the boards of the Town of Truro
 3 represent to you that this property was
 4 buildable?
 5 A. I didn't talk to anybody about it outside of
 6 Nick Brown, who was on the Zoning, Planning
 7 Board, everything.
 8 Q. And didn't Nick Brown represent to you that he
 9 could get you zoning approval to build a
 10 structure on that property?
 11 A. Did he say he could?
 12 Q. Yes.
 13 A. I understand he told -- I mean, I didn't ask
 14 him for his assistance. I just went through
 15 the process myself.
 16 Q. Okay. So he never told you that he could get
 17 you Zoning Board of Appeal approval for
 18 construction on the property, did he?
 19 A. I never asked him about it or talked to him
 20 about it.
 21 Q. And the advertisement for the property said a
 22 one-bedroom addition. Correct? It was --
 23 A. Yes.
 24 Q. And what is depicted in Exhibit 10, your

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1 proposed construction, is more than adding one
 2 bedroom. Correct?
 3 A. Well, it's after Bill Thomas went to court; and
 4 the Court said that it was arbitrary and
 5 capricious on the Town and that it can be a
 6 three- -- it could be built as a three-bedroom.
 7 The Tow- -- the -- the Court did -- made the
 8 de- -- I don't know which court, Superior Court
 9 or whatever. It was -- the court he went to
 10 made that decision. And --
 11 Q. And is that the Barnstable Court you're talking
 12 about?
 13 A. I -- I think so. I don't --
 14 Q. And do you know, has that Court decided to
 15 grant your permit because the Town missed the
 16 deadline or because the Town's decision was
 17 arbitrary and capricious?
 18 A. Their dec- -- their decision was arbitrary and
 19 capricious.
 20 Q. And is it your understanding that then that had
 21 to go through DEP, correct, because -- correct?
 22 A. Yes.
 23 Q. Okay. And what is depicted in Exhibit 10 is
 24 more than a one-bedroom addition. Correct?

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1 A. This is after Bill Thomas won in court. Yes.
 2 Q. Okay. When you purchased the property and the
 3 advertisement said a one-bedroom addition is
 4 possible, did you have any expectation that you
 5 would be able to add on more than one bedroom?
 6 A. It just seemed strange because nothing else was
 7 a one-bedroom down there. No one else had a
 8 one-bedroom.
 9 Q. Did Nick --
 10 A. So I -- I just, you know, had my --
 11 Q. Your hope was that you could add on more than
 12 one bedroom. Correct?
 13 A. Well, I knew the -- the septic system would
 14 have had to be changed. It had -- because what
 15 was there was for a one-bedroom. So, you know,
 16 if you wanted to do differently, you had to
 17 change your septic. You couldn't go with what
 18 was there. You know, if you didn't want to
 19 get -- go through the Board of Health and all
 20 that, you could add on and make a huge
 21 one-bedroom --
 22 Q. Did Nick Brown --
 23 A. -- with what was there.
 24 Q. Did Nick Brown or anybody else from his real

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1 estate firm ever represent to you that you'd be
 2 able to construct more than a one-bedroom
 3 addition on the property?
 4 A. Again, it was -- the septic system that was in
 5 place was only for a one-bedroom. So . . .
 6 Q. Prior to purchasing the property, did you hire
 7 an engineer to determine whether a bigger
 8 septic system --
 9 A. No.
 10 Q. -- complied with -- I have to finish --
 11 complied with Title V could be installed on
 12 that property?
 13 A. No.
 14 MS. ECKER: Okay. Can we take a quick
 15 break?
 16 MR. REVERE: Sure.
 17 (Brief recess taken.)
 18 BY MS. ECKER:
 19 MS. ECKER: Back on the record.
 20 Q. Ms. Cordi-Allen, have you, other than this
 21 appeal that you've filed of Brooke -- Brooke
 22 Newman's building permit, have you filed any
 23 other applications with the Zoning Board of
 24 Appeals?

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1 A. Not that I know of.
 2 Q. So other than this decision that's the subject
 3 of your lawsuit here, have they done anything
 4 else concerning your property -- they being the
 5 Zoning Board of Appeals -- made any decisions?
 6 A. Regarding --
 7 Q. Your property.
 8 A. -- our property? We've been told through town
 9 counsel or the -- I think -- I think it was
 10 town counsel. I -- my lawyer told us that --
 11 and we know Brooke Newman never went to the
 12 Zoning Board. She didn't need a special
 13 permit. But now they're saying that we need a
 14 special permit. So I don't know if that's what
 15 you're talking about or what. But that came
 16 out of Zoning --
 17 Q. Have you ever --
 18 A. -- I believe.
 19 Q. Have you ever had any applications pending
 20 before the Zoning Board of Appeals other than
 21 your appeal of Ms. Newman's building permit?
 22 A. Not -- I don't recall that we've gone in front
 23 of them for this. That's ...
 24 Q. Are you aware whether the Zoning Board of

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1 Appeals has made any decisions concerning your
 2 property other than reviewing your appeal of
 3 Ms. Newman's building permit?
 4 A. We've been told that we have to get a special
 5 permit from the Zoning Board of Appeals.
 6 Q. And town counsel has told you that. Right?
 7 A. Yes.
 8 Q. Do you know if the Zoning Board voted or made
 9 any decision concerning the fact that you would
 10 need or not need the special permit?
 11 A. I'm not sure if they're the ones that told her.
 12 I believe they di- -- I believe they did. But
 13 I wasn't part of that conversation.
 14 Q. Who told you that the Zoning Board of Appeals
 15 told town counsel that you would need to get a
 16 special permit for your property?
 17 A. I was told by my lawyer that --
 18 Q. No. I don't want to know what --
 19 MR. REVERE: Yeah.
 20 Q. -- your lawyer said.
 21 A. Oh.
 22 Q. I want to know if you have any evidence that
 23 anyone from the Zoning Board of Appeals told
 24 town counsel, other than what your lawyer has

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1 told you, to tell you that your property needed
 2 a special permit prior to construction.
 3 A. Okay. What's said between my lawyer
 4 verbally --
 5 Q. It's not -- right.
 6 A. -- of that and in writing doesn't count.
 7 Right?
 8 Q. Correct.
 9 A. Okay. Then, not to my knowledge.
 10 Q. Okay. And do you know whether it was simply
 11 town counsel's advice to the Town that you
 12 would need a special permit rather than any of
 13 the board members telling her that you needed
 14 to get a special permit prior to construction?
 15 A. I would -- I -- I guess -- I don't know. I
 16 haven't heard. But there -- if town -- town
 17 counsel being a lawyer should be consistent.
 18 Otherwise, you're opening yourself up for
 19 problems. And --
 20 Q. And you -- you believe Ms. Turano-Flores is not
 21 consistent?
 22 A. There -- there are inconsistencies that are
 23 evident between Brooke Newman and myself.
 24 So -- by the town. So she's part of the town;

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1 the town's part of the town.
 2 Q. Do you believe that the building inspector or
 3 any of the building inspectors since you've
 4 owned the property who are employed by the Town
 5 of Truro have discriminated against you?
 6 A. Again, through -- yes. Through inconsistencies
 7 of treatment --
 8 Q. Okay. And which --
 9 A. -- and requirements.
 10 Q. Which building inspector?
 11 A. Well, let's see who was the building -- Steve
 12 Williams was before. Corsanzo (sic), Corsano,
 13 Corsanzo (sic), C-o-r- -- I think it was
 14 s-a-n-o -- he was -- he was in position that
 15 was -- he was there, I believe, at the time.
 16 Right. And Steve Williams. This new one, I
 17 don't even know his name: Tom something or
 18 another. But he's just carrying on what the
 19 other two have done.
 20 Q. And what decisions made by Mr. Williams do you
 21 believe are inconsistent?
 22 A. The Town has said --
 23 Q. I'm talking about -- not the Town. I'm talking
 24 about Mr. Williams --

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1 A. Right.
 2 Q. -- specifically.
 3 A. I'm talking exactly about him. The Town has
 4 determined that that whole area is a dune.
 5 Okay. There are certain standards for houses
 6 in dunes. His friend Brooke Newman got all the
 7 permits for a house that was supposedly on
 8 one -- the Town is saying is a dune, yet does
 9 not meet the performance standards of a dune.
 10 Yet for us, we're told that you're in a dune;
 11 and you can't do what you're doing.
 12 Q. And this is Mr. Williams who has said this to
 13 you?
 14 A. And Corsano (sic).
 15 Q. I'm focusing on Mr. Williams right now.
 16 A. Okay.
 17 Q. Okay? Is it your understanding that
 18 Mr. Williams gave Brooke Newman a building
 19 permit?
 20 A. Yes.
 21 Q. And he would not give you a building permit; is
 22 that correct?
 23 A. Yes.
 24 Q. And is it your contention that the decisions

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1 are inconsistent because the property is
 2 located on a dune; both properties are located
 3 on a dune?
 4 A. Yes.
 5 Q. And how do you know Mr. Williams is friends of
 6 Brooke Newman's?
 7 A. Numerous people in town have said it just in
 8 passing that they're friends.
 9 Q. Have you ever seen them together socially?
 10 A. I, pretty much, stay in our own house. I --
 11 Q. So no?
 12 A. -- mind my business. So no. It's just when
 13 people who know them, whatever, you know, have
 14 told me, you know.
 15 Q. Okay. Who are these people?
 16 A. Just townspeople. You know, you go to the
 17 center; you go to Jams; you go in a restaurant.
 18 You know --
 19 Q. Any individual --
 20 A. -- nobody that, you know --
 21 Q. Any individual you can identify for me?
 22 A. I can't think of anybody specifically right
 23 now.
 24 Q. Okay. And what about Mr. Corsano, the second

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1 building inspector --
 2 A. Yes.
 3 Q. -- did he issue a building --
 4 MR. REVERE: Corsano.
 5 Q. Cors- -- whatever.
 6 A. Corsano.
 7 Q. Did he issue a building permit to Ms. Newman?
 8 A. I believe Steve Williams was the one that
 9 issued the permit.
 10 Q. So how has Mr. Corsano been inconsistent in his
 11 decisions?
 12 A. That our house has different standards because
 13 we're in a dune.
 14 Q. Different standards from who?
 15 A. From Brooke Newman's and other -- you know.
 16 And what that property is. They're saying --
 17 like, again, the Town's saying -- the Town has
 18 determined, through their geologist, that that
 19 whole area is a dune. DEP had said twice that
 20 time that we were not in a dune. Brooke
 21 Newman's house has violations going up the
 22 kazoo. Nobody's done anything about that. Yet
 23 for us who is in the same environment, we can't
 24 build.

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1 Q. I'm focusing on the building inspector.
 2 A. That's what I'm --
 3 Q. What decisions --
 4 A. -- talking about.
 5 Q. -- have the building inspectors, Mr. Corsano --
 6 A. Corsano.
 7 MR. REVERE: Corsano.
 8 Q. -- Corsano specifically made that you believe
 9 are inconsistent concerning your property
 10 versus somebody else's?
 11 A. That our house does not meet the -- the
 12 standards for a dune, that we're in a dune and
 13 can't build out on there.
 14 Q. And who's other -- who else has he made a
 15 decision on that you believe is inconsistent
 16 with that decision he's made on your property?
 17 A. Well, Brooke Newman. Nobody -- I know that a
 18 letter was sent to the building inspector. I'm
 19 not sure when he left. So there may have
 20 been -- I don't know. It may have also been
 21 the new one. But a letter was sent about
 22 objecting to Ms. Newman's permits, that they --
 23 that they're not all in order; and her house
 24 isn't in the correct position, et cetera, et

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1 cetera. And the building inspector did not
 2 respond. They dragged it out intentionally.
 3 Q. What's your evidence that the building
 4 inspector dragged it out intentionally?
 5 A. The time delay, extensive time delay.
 6 Q. Okay. Other than the time period, any -- any
 7 evidence that he did that intentionally, the
 8 building inspector?
 9 A. Well, the Town is now saying or trying to use
 10 that and saying that we did not get a response
 11 in time to file an objection.
 12 Q. Do you have any evidence that the building
 13 inspector has any -- holds any malice towards
 14 you or any ill will?
 15 A. He does what he's directed to do.
 16 Q. And who directs him?
 17 A. The selectmen, town manager.
 18 Q. Do you have any evidence that any of the
 19 selectmen have any -- hold any malice or ill
 20 will towards you?
 21 A. Again, there are inconsistencies, there are
 22 lies about our property to the Town.
 23 Q. Who specifically had lied? Which selectman has
 24 specifically lied to the Town about your

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1 property?
 2 A. Oh, I'd have to look at the newspaper articles.
 3 And that would tell.
 4 Q. You can't think of any individual selectman
 5 from the Town of Truro, as we sit here today,
 6 who has lied about your property to the Town?
 7 A. I -- I -- I -- I have read in the paper and
 8 talked with people who were aware of what was
 9 going on down there, that there was a meeting
 10 and -- about taking our property by eminent
 11 domain, that -- and the -- the town counsel had
 12 even said this, that they need to stop us from
 13 our dock for the yacht club. They needed to
 14 take our -- our properties for the yacht club.
 15 And --
 16 Q. Let me stop you. The town counsel being
 17 Ms. Turano-Flores has said that they need to
 18 take --
 19 A. Her --
 20 Q. -- your property by eminent domain for the
 21 yacht club?
 22 A. Who's the -- what firm is she with?
 23 Q. Zisson & Veara.
 24 A. Yes. It was Veara.

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1 Q. So is it your testimony that Mr. Veara stated
 2 that the Town needed to take the Cordi-Allens'
 3 property for the use by the yacht club?
 4 A. It's what I read in the paper, and people have
 5 told me.
 6 Q. Who told you that Mr. Veara said that?
 7 A. People that were at the meeting. I -- I
 8 believe it was the Perrys.
 9 Q. Which meeting?
 10 A. The one to take our property.
 11 Q. And did you attend the meeting?
 12 A. No. I did not.
 13 Q. Okay. Why not?
 14 A. Because we couldn't speak at it.
 15 Q. Who told you you couldn't speak at it?
 16 A. The lawyer that we had, Greg McGregor.
 17 Q. Okay. Did anyone from the Town of Truro or
 18 associated with the Town of Truro tell you that
 19 you would not be able to me -- speak at the
 20 meeting concerning the taking of the tidal
 21 flats?
 22 A. When you have a lawyer, you can't contact your
 23 lawyer. So there was no communication. It was
 24 through my lawyer. So I don't know what they

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1 said to my lawyer. But that's what I was told.
 2 Q. Were you aware prior to taking -- the taking of
 3 the tidal flats that the Town wou- -- intended
 4 to take that property?
 5 A. No.
 6 Q. Okay. So is it your contention you never
 7 received notice that the Town intended to take
 8 the property by eminent domain?
 9 A. Going back to when?
 10 Q. When's the --
 11 A. That's what I want --
 12 Q. When's the first time you received notice that
 13 the Town intended to take the tidal flats?
 14 A. Maybe in 1999. I don't know. Somewhere around
 15 there.
 16 Q. Had you received a letter from the Town?
 17 A. Excuse me. It was, I think, in 2000. I
 18 believe it was 2000.
 19 Q. And you belie- -- received a letter from the
 20 Town. Correct?
 21 A. Pardon?
 22 Q. You received a letter from the Town concerning
 23 the taking of the --
 24 A. Yes.

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1 Q. -- tidal flats?
 2 A. Yes.
 3 Q. Okay. And you're aware that other property
 4 owners also received letters to take the tidal
 5 flats. Correct?
 6 A. Yes.
 7 Q. And did it state in that letter the reason why
 8 the tidal flats were being taken?
 9 A. They must have had some reason.
 10 Q. Do you recall what the reason was?
 11 A. No.
 12 Q. Do you know why the tidal flats were taken?
 13 A. So the yacht club could put more of their boats
 14 there --
 15 Q. Who told --
 16 A. -- and --
 17 Q. Who told you that?
 18 A. The harbormaster.
 19 Q. And who was the harbormaster at the time?
 20 A. Warren Roderick. And, also, the one that just
 21 left told me that Brooke Newman, she now has a
 22 mooring. The Town has said that we can't put
 23 our floats where we were permitted for, which
 24 does not interfere with navigation. And -- but

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1 we were charged \$2,100 to char- -- the Town has
 2 said that we cannot use that because it's the
 3 town-owned land.
 4 But Brooke Newman does not have a permit
 5 from DEP, has no permit for her float which is
 6 at the end of our pier which is exactly where
 7 our dock was going. But he's -- he said to me,
 8 he said, Well, you know, I don't know how it
 9 got there. And he -- I said, Give me an
 10 application so I can put floats out there. He
 11 said, I can't. They won't let me.
 12 Q. Who told you that?
 13 A. The harbormasters.
 14 Q. Mr. Roderick?
 15 A. And the one that left this year or last year.
 16 Q. Do you know why Mr. Roderick left the Town?
 17 A. I know he was getting threats from the Town.
 18 He told us. It was in the paper.
 19 Q. What type of threats was he getting from the
 20 Town?
 21 A. If he didn't do what -- go -- if he didn't sign
 22 a paper going against our dock, he would not
 23 get a \$5,000 raise.
 24 Q. Do you know who said that to him or allegedly

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1 said that to Mr. Roderick?
 2 A. The town manager.
 3 Q. Which was who at the time?
 4 A. Bud Breault.
 5 Q. Okay. Other than Mr. Roderick telling you
 6 that, do you have any evidence that Mr. Breault
 7 said that?
 8 A. It's been a -- it's been documented in the
 9 newspaper.
 10 Q. The newspaper articles that I have all say that
 11 that comes from Mr. Roderick. Correct?
 12 Anybody else you know ever heard that?
 13 A. Mr. Roderick, I believe, in that article, said
 14 that he was given a prewritten letter by the
 15 town manager; and I think the Harbor Commission
 16 was there also and told that.
 17 Q. Okay. So other than Mr. Roderick saying
 18 this --
 19 A. And the newspaper.
 20 Q. Well, the newspaper quoting Mr. Roderick. Any
 21 other statements?
 22 A. They had pictures of the letter in the paper.
 23 Q. Any other statements or any evidence that you
 24 have that Mr. Roderick was forced to sign that

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1 letter or threatened if he did not?
 2 A. What he told us and what he has publicly said.
 3 Q. And do you know why Mr. Roderick is no longer
 4 employed by the Town?
 5 A. I -- I think there were a lot of -- a lot of
 6 reasons probably that haven't come out. And I
 7 think the -- the excuse in the paper was
 8 something about he put down that he worked some
 9 hours that he didn't. Yeah. In all honesty,
 10 I -- I don't -- I really don't know. But
 11 that's what I think I read in the paper.
 12 But ...
 13 Q. Do you keep in touch with Mr. Roderick?
 14 A. No. I do not.
 15 Q. Do you know where he is?
 16 A. No.
 17 Q. Did you ever talk to Mr. Roderick about his
 18 termination from his employment with the Town?
 19 A. No.
 20 Q. Do you believe that Nick Brown made any
 21 misrepresentations to you about the property at
 22 the time of the sale?
 23 A. Yes.
 24 Q. Okay. And what misrepresentations did Mr. Brown

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1 make?

2 A. He said, again, about the dock, you're

3 grandfathered for your dock. The floats are

4 here. Just apply for it, and you'll get your

5 permit to use the floats. And that was

6 advertised in the newspaper.

7 Q. Any other misrepresentations you believe that

8 Mr. Brown made at the time of the sale?

9 A. About the ad -- addition. We could add on

10 with a septic that was there, you know, up to

11 5,000 square foot if we wanted a one-bedroom

12 structure with the septic that was there.

13 And --

14 Q. Did you ever file a lawsuit against Mr. Brown

15 because of these misrepresentations?

16 A. No.

17 Q. Why not?

18 A. My lawyers --

19 Q. I don't want to know what your lawyer said.

20 Okay. I'm going to show you a -- a document

21 and ask if you rec- --

22 MS. ECKER: Let me have her mark it first

23 as Exhibit 11.

24 (Advertisement marked as Cordi-Allen

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1 Exhibit No. 11.)

2 Q. If you could take a look at what's marked as

3 Exhibit 11 and tell me if you recognize it.

4 A. It looks like one of -- an ad that I -- it was

5 probably in one of those magazines, the real

6 estate magazine.

7 Q. Okay. Is the third one down an advertisement

8 for your property?

9 A. Yes.

10 Q. And is that the advertisement you saw prior to

11 purchasing your home?

12 A. I believe so.

13 Q. And that advertisement says "Waterfront

14 boathouse renovated with loft bedroom."

15 Correct?

16 A. Yes.

17 Q. "Existing dock and addition possible for one

18 bedroom." Correct?

19 A. "With an addition possible."

20 Q. "For one bedroom"?

21 A. "For one bedroom." Yes.

22 Q. And the purchase price as advertised was

23 \$195,000. Correct?

24 A. Yes.

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1 Q. And how much did you purchase the property for?

2 A. I think, 145.

3 Q. And do you -- was there a negotiation as to the

4 purchase price?

5 A. Yes.

6 Q. Okay. And why was the prop- -- the property

7 price reduced by \$50,000?

8 A. Well, there were others that were 95,000 right

9 above it. So ...

10 Q. Well, was there any specific reason why you

11 purchased -- it was determined that you would

12 purchase the property for 145, \$50,000 below

13 the asking price?

14 A. Well, houses --

15 Q. I'm just asking.

16 A. Yeah. I'm just -- I'm trying to answer you.

17 You know, this house here is a two-bedroom on

18 the beach for 195. This one here isn't even a

19 one-bedroom; there's no bedroom. The loft is

20 not a bedroom. So --

21 Q. Did you --

22 A. -- it was maybe overpriced. I know --

23 Q. Did you negotiate with Mr. Brown for the

24 purchase price?

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1 A. Well, you do the paperwork. You put in a

2 offering price.

3 Q. Do you know how long the house was on the

4 market prior to your purchase of it?

5 A. No. I think it was on and off. I don't ...

6 Q. Had you spoken with anybody else who had looked

7 at the pro- -- at the property and decided not

8 to purchase it?

9 A. No.

10 Q. And the house that you purchased had a dock.

11 Correct? Had an existing dock. Correct?

12 A. Well, no.

13 Q. Okay. I'm going to show you what's been marked

14 as Exhibit 5 at your prior deposition.

15 A. Uh-huh.

16 Q. Okay. And if you look at -- there's red

17 marker --

18 A. Uh-huh.

19 Q. -- on -- on the exhibit. Correct?

20 A. Right.

21 Q. And that shows an extension of a dock that you

22 were requesting. Correct?

23 A. Yes. This here, they call a pier.

24 Q. Oh, I'm sorry.

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- 1 A. Okay?
- 2 Q. Okay.
- 3 A. Yeah. And these are the floats there, the ones
- 4 that he said we were grandfathered and put back
- 5 out.
- 6 Q. So it's your testimony that what existed at the
- 7 time of your purchase of the property was a
- 8 pier and not a dock?
- 9 A. This is called -- well, now I'm finding out the
- 10 terminologies. This is called a pier. Okay.
- 11 And to make it a dock, you need to put in your
- 12 floats and a T. Like, see this? That -- that
- 13 makes that a dock. So you can -- you know,
- 14 here, you -- you're going to fall into the
- 15 harbor.
- 16 Q. Okay. So when you say "See this," you're
- 17 pointing to the dock that's at the yacht club.
- 18 Correct?
- 19 A. Right.
- 20 Q. Okay. And when you went to purchase the
- 21 property, you observed that there was a pier
- 22 located there. Correct?
- 23 A. Yes.
- 24 Q. Okay. And so when Mr. Brown said to you,

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- 1 There's a dock, did you understand him to mean
- 2 that portion that you now refer to as a pier
- 3 existed?
- 4 A. That that existed and the floats to con- -- to
- 5 make it one. And you see like that I was
- 6 showing -- I'll show you again -- right --
- 7 right here is -- that's all owned by the Town,
- 8 supposedly. But --
- 9 Q. And you're circling the area at the --
- 10 A. The area --
- 11 Q. -- yacht club?
- 12 A. -- of the yacht club. Right. There, this,
- 13 this, their floats, okay, and their -- their
- 14 ramp there. That's all on town-owned land. We
- 15 can't put ours on town-owned land, but they
- 16 can. Okay. And --
- 17 Q. Ms. -- Ms. --
- 18 A. -- Brooke Newman's -- wait a minute -- Newman
- 19 has put her boat right here. Now, if this is
- 20 going to interfere with navigation, her boat
- 21 would interfere with navigation. And I only
- 22 point -- point that out to you 'cause now you
- 23 have the diagram where you could see it.
- 24 Q. Okay.

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- 1 A. And, again, that's on town-owned land.
- 2 Q. When you went to look at the property prior to
- 3 your purchase of it --
- 4 A. Yes.
- 5 Q. -- you saw that there was an existing what you
- 6 now call a pier. Correct?
- 7 A. Yes.
- 8 Q. And did you believe that what you now call a
- 9 pier was the dock that the advertisement was
- 10 referring to?
- 11 A. With --
- 12 Q. The floats.
- 13 A. With the floats --
- 14 Q. Okay.
- 15 A. -- it would have been complete.
- 16 Q. Okay. And the floats that you're pointing to
- 17 still exist. Correct?
- 18 A. Yes.
- 19 Q. Okay.
- 20 A. Some of them are there.
- 21 Q. Okay. So when you say he misrepresented to you
- 22 that there was a dock, did Mr. Brown ever
- 23 represent to you that you'd be able to extend
- 24 your pier?

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- 1 A. Yes.
- 2 Q. Okay. What did he specifically say to you?
- 3 A. He said to us that we're grandfathered. And he
- 4 left the floats there to grandfather us.
- 5 Q. Well, the floats are still there. My question
- 6 to you is, did Mr. Brown ever say to you that
- 7 you would be able to extend the pier as appears
- 8 in this red line, your proposal for the
- 9 extension?
- 10 A. Yes.
- 11 Q. Okay. And how far out did Mr. Brown tell you
- 12 you'd be able to extend the pier? How many
- 13 feet?
- 14 A. What the license -- there was a license that
- 15 was in existence. And we were going by -- he
- 16 said, to get -- to reinstate the license, he
- 17 left the floats on the property. And I --
- 18 there were -- there's like -- I think it was
- 19 seven floats, and they were 10 feet. So 70.
- 20 And then there was a T. So somewhere about 80
- 21 feet, I think.
- 22 Q. And did you ever check to make sure Mr. Brown's
- 23 representation was accurate?
- 24 A. In fact, we applied to DEP. And my lawyer at

| | |
|--|---|
| <p style="text-align: right;">Page 260</p> <p>1 the time and us got a call from DEP that our</p> <p>2 permit was coming in the mail, that it had been</p> <p>3 approved. And two weeks later, we got a</p> <p>4 denial. And then like, what is going on?</p> <p>5 Q. A denial from DEP. Correct?</p> <p>6 A. Right.</p> <p>7 Q. And are you claiming that the DEP's decision</p> <p>8 was inconsistent or discriminatory in some</p> <p>9 manner?</p> <p>10 A. Somebody, something got to DEP to make them</p> <p>11 flip.</p> <p>12 Q. Do you have any evidence of that?</p> <p>13 A. Do I? Only that I was called from DEP that my</p> <p>14 permit was coming in the mail.</p> <p>15 Q. Who did you speak with?</p> <p>16 A. Jim Mahala. And Liz Kouloheras spoke with my</p> <p>17 lawyer and told him that it had been approved.</p> <p>18 And that's what he told me.</p> <p>19 Q. And, at some point in time, they changed their</p> <p>20 decision. Correct?</p> <p>21 A. Yeah.</p> <p>22 Q. Because DEP did not approve the extension of</p> <p>23 your --</p> <p>24 A. No.</p> | <p style="text-align: right;">Page 262</p> <p>1 Yes. But I was getting it through --</p> <p>2 everything, I was getting my permit --</p> <p>3 Q. Let's focus on the questions,</p> <p>4 Ms. Cordi-Allen --</p> <p>5 A. Yeah.</p> <p>6 Q. -- and we'll move along much quicker. Okay?</p> <p>7 A. But we had a site visit.</p> <p>8 Q. I --</p> <p>9 A. And it had been agreed on by DEP to shorten it,</p> <p>10 to change this here, to shorten it. And it was</p> <p>11 agreed with DEP, everybody, the Town, the yacht</p> <p>12 club, everybody, Army Corps of Engineers that</p> <p>13 they -- we all agreed to having this shortened</p> <p>14 and ...</p> <p>15 Q. And then what happened?</p> <p>16 A. After we agreed, we had the plans drawn up by</p> <p>17 Felco to what we were told to do. And then</p> <p>18 they rejected us again.</p> <p>19 Q. Did the Army Corps -- Corps reject your plans?</p> <p>20 A. No. They did not.</p> <p>21 Q. They approved your plans --</p> <p>22 A. They did. Uh-huh.</p> <p>23 Q. -- for the dock extension?</p> <p>24 A. Yeah.</p> |
| <p style="text-align: right;">Page 261</p> <p>1 Q. -- pier?</p> <p>2 A. DEP did approve it.</p> <p>3 Q. When?</p> <p>4 A. And --</p> <p>5 Q. You just told me that they flipped.</p> <p>6 A. Right. They had called and said that they</p> <p>7 approved it.</p> <p>8 Q. Do you have any documentation that it was ever</p> <p>9 approved by DEP?</p> <p>10 A. Yes. Actually, it was approved through</p> <p>11 Wetlands. I --</p> <p>12 Q. I'm just asking --</p> <p>13 MR. REVERE: She's -- she's answering --</p> <p>14 MS. ECKER: I don't want you -- I don't --</p> <p>15 MR. REVERE: -- what -- it was my problem.</p> <p>16 Explain.</p> <p>17 A. I think there was a -- there are two parts to</p> <p>18 DEP. One's Waterways, and one's Wetlands.</p> <p>19 Q. Uh-huh.</p> <p>20 A. And Wetlands approved it.</p> <p>21 Q. Uh-huh.</p> <p>22 A. And Waterways --</p> <p>23 Q. Did not.</p> <p>24 A. -- did not. However, we had a site visit.</p> | <p style="text-align: right;">Page 263</p> <p>1 Q. Had the Army Corps ever rejected any of your</p> <p>2 applications?</p> <p>3 A. Has the Army Corps? No.</p> <p>4 Q. Did you ever accuse the Army Corps of</p> <p>5 discriminating against you? And the Army</p> <p>6 Corps, I mean the Army Corps of Engineers.</p> <p>7 A. Yeah. Not to my knowledge.</p> <p>8 Q. Have you ever accused the Army Corps of</p> <p>9 Engineers of being inconsistent in their</p> <p>10 decisions concerning your property?</p> <p>11 A. I don't remember.</p> <p>12 Q. Okay. The same --</p> <p>13 A. I don't. I don't even recall any of that.</p> <p>14 Q. The same questions for the Department of</p> <p>15 Environmental Protection, have you ever accused</p> <p>16 any branch of the Department of Environmental</p> <p>17 Protection of discriminating against you?</p> <p>18 A. I don't know.</p> <p>19 Q. Okay. Have you ever accused any part of the</p> <p>20 Department of Environmental Protection or any</p> <p>21 person of making inconsistent decisions</p> <p>22 concerning your property?</p> <p>23 A. Yeah. Oh. Oh, I'll tell anybody that.</p> <p>24 Definitely.</p> |

| Page 264 | Page 266 |
|---|--|
| <p>1 Q. Okay. And who specifically at the Department 2 of Environmental Protection do you believe has 3 made inconsistent decisions concerning your 4 property? 5 A. Liz Kouloheras. 6 Q. Anybody else? 7 A. Jim Mahala. 8 Q. And why do you believe they have been 9 inconsistent? 10 A. Well, Liz Kouloheras twice has said that our 11 property is not a dune. And that's in the 12 documents. And somehow, now, all of a sudden, 13 she's flipped and said it is a dune now that we 14 own it. 15 Q. Do you believe -- 16 A. She said -- 17 Q. -- she'd done -- 18 A. She said that we were getting our permits for 19 the dock, the original dock. And then she 20 issued a denial, you know. 21 Q. Do you believe that she holds any malice or ill 22 will towards you? 23 A. Well, my only concern is, why did she flip? 24 And we all know how the Government works.</p> | <p>1 Q. Going back to the eminent domain for a minute, 2 do -- were you aware that there was a meeting 3 held with other property owners and between the 4 other property owners in the town concerning 5 the taking of the tidal flats prior to it going 6 forward? 7 A. I don't know. 8 Q. Well, you testified you didn't attend because 9 you wouldn't be able to speak. Correct? 10 A. Well, that was at the town meeting? 11 Q. Yes. 12 A. Is that what you're talking about? 13 Q. Yes. 14 A. Okay. I thought you meant a private meeting. 15 Q. No. Town meeting. There was a town meeting 16 held. Correct? 17 A. Yes. 18 Q. And you were aware that the town meeting was 19 going to be held. Correct? 20 A. Yes. 21 Q. Okay. And other property owners had their 22 tidal flats taken. Correct? 23 A. Yes. 24 Q. Okay. Do you know how many other property</p> |
| Page 265 | Page 267 |
| <p>1 So ... 2 Q. Well, how does the Government work? 3 A. People, certain people can make a phone call to 4 any state agency and get whatever people want. 5 Q. Do you have any evidence that anyone from the 6 Town of Truro called anyone at the DEP outside 7 of the hearings and the -- the evidence that 8 has been introduced regarding your property to 9 tell them to flip their decision? 10 A. I -- I don't know who made what or why they -- 11 they flipped. But she totally flipped. And 12 she flipped on her own decisions twice. 13 Q. And do you know if that's based on additional 14 evidence that she received to make her -- to 15 change her decision? 16 A. Nothing down there has changed. So ... 17 Q. Do you have any evidence that she or the other 18 gentleman at the Department of Environmental 19 Protection that you have testified made 20 inconsistent decisions holds any malice or ill 21 will towards you personally? 22 A. They close their eyes for what is going on down 23 there, and they only do what the Town of Truro 24 wants.</p> | <p>1 owners? 2 A. Well -- 3 Q. Yes or no? 4 A. Let's see. I don't know how many in total. 5 Q. Okay. And each property owner was offered a 6 sum of money for their tidal flats. Correct? 7 A. Yes. 8 Q. Okay. And do you know if there was negotiation 9 between the property owners and the Towns 10 concerning the amount that was to be given? 11 A. I don't know. 12 Q. Did you know if you were allowed to negotiate 13 the price? 14 A. We wanted our dock. We bought that property 15 for a dock. There was no town pier when we 16 bought the property. It was -- I am disabled. 17 Wait a minute. I'm disabled. My daughter's 18 disabled. That's why we bought the property 19 with a dock. 20 The yacht club got whatever monies they 21 got, quite a large amount. And they got to 22 keep their dock and the town land. And us, it 23 was -- and this is, the -- the town lawyer 24 said, to stop us from our dock, they are doing</p> |

| | |
|--|---|
| <p style="text-align: right;">Page 268</p> <p>1 this.</p> <p>2 Q. That was --</p> <p>3 A. The other --</p> <p>4 Q. -- Mr. Veara, just so I'm clear --</p> <p>5 A. Yeah.</p> <p>6 Q. -- who said that?</p> <p>7 A. And the other two people could not put a dock</p> <p>8 in. So it would not affect them in any way.</p> <p>9 So it's not -- and they were offered, at least,</p> <p>10 tenfold of what we were offered.</p> <p>11 Q. Were you represented at the time of the eminent</p> <p>12 domain taking of the tidal flats?</p> <p>13 A. Yes.</p> <p>14 Q. And so did you approach the Town in any way,</p> <p>15 you or a representative, to negotiate the price</p> <p>16 for taking of the tidal flats --</p> <p>17 A. I --</p> <p>18 Q. -- your tidal flats?</p> <p>19 A. I don't know if my attorney did. I don't think</p> <p>20 he did.</p> <p>21 Q. And so you were given a sum of money. Correct?</p> <p>22 A. No. We did not get a penny.</p> <p>23 Q. So it's your testimony you were never offered</p> <p>24 any amount of money and never given an amount</p> | <p style="text-align: right;">Page 27 O</p> <p>1 MS. ECKER: Is there another eminent domain</p> <p>2 lawsuit?</p> <p>3 MR. REVERE: Let's go off the record.</p> <p>4 (A brief discussion was held off the</p> <p>5 record.)</p> <p>6 MS. ECKER: On the record.</p> <p>7 Q. The dock that appears at the yacht club was</p> <p>8 already built at the time that the eminent</p> <p>9 domain taking occurred. Correct?</p> <p>10 A. I'm not su -- I don't -- I'm not sure. I know</p> <p>11 that they were not licensed for their dock and</p> <p>12 their configuration. I've noticed some new</p> <p>13 floats being added continually. So I -- I</p> <p>14 really can't tell you, you know, exactly what</p> <p>15 was in place at what date.</p> <p>16 Q. Do you know when the eminent domain taking</p> <p>17 occurred? About 2000?</p> <p>18 A. It started in 2000, and I think it ended in</p> <p>19 what, 2002.</p> <p>20 Q. Okay.</p> <p>21 MR. REVERE: Go off -- go off the record</p> <p>22 very --</p> <p>23 (A brief discussion was held off the</p> <p>24 record.)</p> |
| <p style="text-align: right;">Page 269</p> <p>1 of money?</p> <p>2 A. We were never given anything. We never took</p> <p>3 anything.</p> <p>4 Q. You weren't given \$2,500?</p> <p>5 A. No. We weren't given anything.</p> <p>6 Q. Were you offered \$2,500?</p> <p>7 A. There was an offering for about that, somewhere</p> <p>8 around there.</p> <p>9 Q. Did you accept the offer?</p> <p>10 A. No.</p> <p>11 Q. And you never tried to negotiate the price.</p> <p>12 Correct?</p> <p>13 A. We have an eminent domain lawyer handling that.</p> <p>14 Q. Still?</p> <p>15 A. Yes.</p> <p>16 Q. And is there a lawsuit?</p> <p>17 A. Yes.</p> <p>18 Q. Okay. Where's that lawsuit?</p> <p>19 A. I have no idea.</p> <p>20 MR. REVERE: Off the record or on the</p> <p>21 record.</p> <p>22 MS. ECKER: You can go off or on. But</p> <p>23 there better not be another one.</p> <p>24 MR. REVERE: Huh?</p> | <p style="text-align: right;">Page 271</p> <p>1 Q. I'll represent to you -- and you can see that</p> <p>2 this photograph that's in Exhibit 5 was taken,</p> <p>3 at least, at some time in the '90s prior to the</p> <p>4 eminent domain taking. Correct? But I don't</p> <p>5 have a -- the final number on it.</p> <p>6 A. Yeah.</p> <p>7 Q. But it says '90. And as appears in this</p> <p>8 photograph that's Exhibit 5, there is a dock</p> <p>9 that has already been constructed o- -- off the</p> <p>10 yacht club.</p> <p>11 A. Yes.</p> <p>12 Q. Correct? And so that dock was present and</p> <p>13 constructed at the time the eminent domain</p> <p>14 taking occurred. Correct?</p> <p>15 A. That dock, I don't know that -- I don't think</p> <p>16 that's the dock that's there now.</p> <p>17 Q. Okay. So it's your te- --</p> <p>18 A. That's what I'm saying.</p> <p>19 Q. Okay. So it's your testimony there's another</p> <p>20 dock that's there?</p> <p>21 A. Yes.</p> <p>22 Q. Is it your testimony that they replaced the</p> <p>23 dock that is depicted in Exhibit 5?</p> <p>24 A. They have added -- yes. They've added.</p> |

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1 Whoops.
 2 Q. Okay. And the eminent domain taking that
 3 occurred did not affect the pier on your
 4 property. Correct? You still own that pier?
 5 A. I think they gave an easement for the pier --
 6 Q. Okay. So you stopped --
 7 A. -- which -- which they call now a walkway.
 8 Q. So that's still your right. That's still your
 9 pier. Correct?
 10 A. I guess.
 11 Q. Do you have any evidence that it's not your
 12 pier, that you don't own it anymore?
 13 A. Well, there's an easement. So I don't --
 14 Q. Was your title changed?
 15 A. I don't know what they recorded.
 16 Q. Is it your understanding that anyone from the
 17 public can use that pier?
 18 A. From the public? I don't think anybody can use
 19 it.
 20 Q. Other than --
 21 A. It's not --
 22 Q. -- you?
 23 A. No. We can't use it. We're not allowed to use
 24 it.

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1 Q. You're not allowed to walk on it?
 2 A. We can walk on it, but we can't tie a boat up
 3 to it.
 4 Q. But the actual pier itself is yours. And you
 5 could walk on it, and you own it. Correct?
 6 A. Currently. Yes.
 7 Q. And what about the floats that you pointed to
 8 that were there when you purchased the
 9 property, those are still there. Correct?
 10 A. Some of them.
 11 Q. And this photograph that's in Exhibit 5 depicts
 12 the harbor at low tide. Correct?
 13 A. Yeah. Yes.
 14 Q. And, at high tide, the water comes up to the
 15 end of your pier. Correct?
 16 A. About. It depends on what kind of a high tide.
 17 Q. And, actually, in some cases, the water has
 18 come up further than your pier to around your
 19 house. Correct?
 20 A. It depends on the -- on the moon and all that.
 21 Q. Now, you have opposed other dredging in the
 22 Pamet Harbor. Correct?
 23 A. Yes.
 24 Q. And are you aware that the harbor had been

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1 dredged prior to your purchase of the property
 2 on occasion?
 3 A. I believe so.
 4 Q. And do you believe that the Town's desire to
 5 dredge the harbor has anything to do with you
 6 or your property?
 7 A. It's going to have an impact on our property.
 8 Q. How so?
 9 A. Well, if, in fact, we're on a dune, it's going
 10 to erode our property.
 11 Q. Do you believe that the Town decided to
 12 redredge the harbor because of you or your
 13 property or that they just decided to redredge
 14 it?
 15 A. I don't -- I don't know why they're -- what
 16 their intentions are.
 17 Q. Well, do you have any evidence that the -- that
 18 the Town's decision to dredge the property
 19 (sic) had -- was because of you or your
 20 property?
 21 A. We can't use the harbor. So what would it have
 22 a...
 23 Q. I'm just asking 'cause you -- now, it's the
 24 question. That's the answer. Right?

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1 A. Would you repeat the question?
 2 Q. Sure. Did the Town make the decision to dredge
 3 the harbor based on anything to do with you or
 4 your property?
 5 A. I don't know.
 6 Q. Do you have any evidence that they did, that
 7 the dredging had anything to do with you and
 8 their desire to dredge?
 9 A. I don't know what their intent is.
 10 Q. Are you alleging that the Town decided to
 11 dredge the harbor to discriminate against you?
 12 A. Yeah.
 13 Q. Why?
 14 A. So they can add more boats in front of our
 15 property that won't be ours.
 16 Q. Okay. And you believe that's intentionally
 17 done to discriminate against --
 18 A. Yeah.
 19 Q. -- you?
 20 A. Definitely.
 21 Q. What evidence do you have that you -- that was
 22 the intent of the Town when they dredged the
 23 harbor?
 24 A. That was their intent of the taking.

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1 Q. To allow more boats to be in the harbor?
 2 A. For the yacht club. So ...
 3 Q. Why do you think it's for the yacht club and
 4 not the Town in general?
 5 A. There -- it's the yacht club people that have
 6 their boats there. They've told people --
 7 we've owned, okay, to mean low tide. The
 8 Town -- which, if we own it, we are entitled to
 9 rent these moorings out. However, this here
 10 property is ours. These boats are on our
 11 property. Yet the Town has collected rent from
 12 them.
 13 Q. How do you --
 14 A. Yeah.
 15 Q. And did anyone tell you you're entitled to rent
 16 your moorings out?
 17 A. They're not ours.
 18 Q. Well --
 19 A. They're on our property. It's our land. If --
 20 they can't put things on your land. Okay.
 21 So --
 22 Q. Is it your testimony today that you still own
 23 the property that's depicted in Exhibit 5 where
 24 the boats are -- are moored?

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1 A. We owned it for six years until they did the
 2 taking.
 3 Q. Okay. When they took the tidal flats.
 4 Correct?
 5 A. Uh-huh.
 6 Q. Okay. And did anyone tell you during those six
 7 years that you can rent out those moorings?
 8 A. We -- we -- no. We -- well, I believe my
 9 attorney had written correspondence with the
 10 Town about the boats being placed on our
 11 property and that the Town should not be
 12 collecting rent for boats on our property.
 13 Q. And the Town disagreed with you. Correct?
 14 A. They ignored it, I believe.
 15 Q. Do you know if there was any correspondence
 16 back that you were, in fact, incorrect?
 17 A. I don't recall getting any correspondence from
 18 them.
 19 Q. Have you used Mr. LaJoie as your engineer?
 20 A. Yes.
 21 Q. And are you aware that Mr. LaJoie was the prior
 22 property owners' engineer when the initial
 23 septic system was put in?
 24 A. I'm not sure.

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1 Q. Do you know if Mr. LaJoie was present at the
 2 meetings when the one-bedroom restriction was
 3 placed on your property prior to your owning
 4 it?
 5 A. I don't. I don't know.
 6 Q. Have you ever spoken with Mr. LaJoie about that
 7 one-bedroom restriction?
 8 A. Only that we were told that we could put a
 9 three-bedroom septic in by the Court and to
 10 draw up the plans accordingly.
 11 Q. Did Mr. LaJoie -- or have you ever had a
 12 conversation with Mr. LaJoie about the
 13 subdivision of the property prior to your
 14 purchasing it?
 15 A. I -- I don't think so. That's -- I don't
 16 recall.
 17 Q. And did you ever talk to Mr. LaJoie prior to
 18 your pur -- purchasing of the property?
 19 A. Prior? I don't -- about this? No. I don't
 20 believe so.
 21 Q. When's the first time you spoke with Mr. LaJoie
 22 after you purchased the property?
 23 A. About drawing up the plans.
 24 Q. Okay. How -- how soon after the purchase of

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1 the property did you speak with him?
 2 A. After our purchase?
 3 Q. Yes. Well, you didn't speak with him before.
 4 Correct?
 5 A. Right. That --
 6 Q. So after the purchase.
 7 A. I was wondering what date you were looking
 8 for --
 9 Q. When's the first --
 10 A. -- from which --
 11 Q. -- time --
 12 A. -- point. We drew up a tentative plan, I
 13 think, in July or August of '96. But then we
 14 needed formal plans after that. And he drew
 15 that up and the dock. So it was somewhere in
 16 '96.
 17 Q. That you first spoke with Mr. LaJoie about --
 18 A. Yes.
 19 Q. -- drawing up plans? And, at that time, did
 20 Mr. LaJoie tell you that he was involved with
 21 the prior property owner when the property was
 22 subdivided?
 23 A. I don't recall him saying anything about that.
 24 Q. Do you have any knowledge that Mr. LaJoie was

29 (Pages 276 to 279)

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1 actually present at the hearings for the prior
 2 property owner when the --
 3 A. No.
 4 Q. -- property was being subdivided?
 5 A. No.
 6 Q. When you first spoke with Mr. LaJoie about
 7 drawing up plans, did he tell you there was a
 8 one-bedroom restriction on the property? Or
 9 did you al- -- had you already learned that?
 10 A. No. I -- Bill Thomas had -- once Bill Thomas
 11 had won in court, that's when we knew that we
 12 could build a three-bedroom septic. So it was
 13 after Mr. Thomas went to court that we --
 14 MR. REVERE: Focus on the time she's asking
 15 you.
 16 Q. When -- did you contact Mr. LaJoie prior to
 17 your finding out the court decision?
 18 A. I believe I had him draw up the dock component.
 19 Yeah. In '96, I -- I believe that was so we
 20 could get that out in the mail.
 21 Q. And that's --
 22 A. Because we no -- yeah. It's because I had
 23 notified the Town that we -- our intent was to
 24 put out our floats in '96. And they sent me a

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1 letter that it was costing me \$2,100; and the
 2 yacht club was \$300 for -- both were the same
 3 amount of floats. And they had no license.
 4 And we were going through the proper channels.
 5 And I believe then I had him draw up whatever
 6 it was needed for DEP or whatever for the
 7 plans.
 8 I -- I'm pretty sure that was -- because in
 9 '97 is when I learned that they started trying
 10 to stop me from my dock for the yacht club
 11 and -- you know, so the yacht club could get
 12 out. And I was like, my property has nothing
 13 to do with the yacht club getting out at all.
 14 Q. When's the first time you had Mr. LaJoie draw
 15 any plans for the septic system on your
 16 property?
 17 A. For the septic system? He did -- he would have
 18 done that after Bill Thomas went to court. And
 19 I don't know the date.
 20 Q. Prior to Mr. Thomas going to court, did you
 21 have any engineers draw up any plans for a
 22 septic system?
 23 A. I used Felco. That's the only one I use.
 24 Q. Okay. And when Felco drew up the plans, is

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1 Felco -- is -- is now Mr. LaJoie?
 2 A. Yes.
 3 Q. It is. Okay. So prior to going to court --
 4 A. He might be a son, you know, of -- I don't know
 5 that he --
 6 Q. Prior to going to court, Mr. Thomas going to a
 7 court to appeal a decision by the Town denying
 8 your septic plan, you had to have the plan
 9 drawn up, correct, to submit to the Town?
 10 MR. REVERE: Yeah.
 11 A. But we, through -- we just sketched one out, I
 12 believe, at that time.
 13 Q. You didn't have an engineer do it?
 14 A. No.
 15 MR. REVERE: Can we go off the record for a
 16 second? Let -- let me talk to you.
 17 (Brief recess taken.)
 18 BY MS. ECKER:
 19 Q. Ms. Cordi-Allen, in October of 1996, did you go
 20 to the Board of Health with plans that had been
 21 drawn up by Mr. LaJoie for the septic system,
 22 approximately at that time frame? You know
 23 what?
 24 A. I -- I don't -- I really don't remember if --

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1 Q. All right. Forget the time frame. I don't
 2 care. All I want to know is, the first time
 3 you approached Mr. LaJoie to draw up plans for
 4 you for the septic plan, did you discuss with
 5 him a one-bedroom restriction that had been
 6 placed on the property?
 7 A. I don't believe so, 'cause it was a
 8 three-bedroom I had him draw up. So ...
 9 Q. Did Mr. LaJoie ever tell you he was present
 10 when the one-bedroom restriction was placed on
 11 the property?
 12 A. I don't recall him saying anything about that.
 13 Q. When's the first time you learned of the
 14 one-bedroom restriction?
 15 A. When did I learn? I -- I learned that there
 16 was a -- a one-bedroom septic in place. Let me
 17 shut this off. His mother's not well at all.
 18 So it's day to day.
 19 MR. REVERE: We're off the record.
 20 (Off the record due to incoming cell phone
 21 call.)
 22 Q. Okay. I -- I understand you've told me that
 23 you knew about the -- the one-bedroom septic
 24 when you purchased it. But when did you learn

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1 of the one-bedroom restriction that had been
 2 voted on by the Board of Selectmen?
 3 A. I don't remember.
 4 Q. Do you remember if it was before you filed your
 5 application with the Town for your septic
 6 system?
 7 A. I -- I don't remember.
 8 Q. And do you believe that the Board of Health
 9 inspector discriminated against you in any
 10 manner in denying your septic permit?
 11 A. You mean, Steve Williams? That was the
 12 building inspector and the health inspector.
 13 MR. REVERE: Can we go off the record for
 14 just a second?
 15 MS. ECKER: No. Let's just finish this.
 16 MR. REVERE: You know, the septic was
 17 denied not by --
 18 MS. ECKER: Put it on the record.
 19 MR. REVERE: Not by -- it was denied by the
 20 selectmen at a meeting, not by a person of the
 21 Board of Health. Okay? That's all. So --
 22 MS. ECKER: I think, at some point, it was
 23 also denied by the Board. But whatever.
 24 MR. REVERE: Okay. In any event, that --

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1 that's just the . . .
 2 A. At that time, the Board of Health person was
 3 the building inspector. Same guy; two hats.
 4 Q. Okay. And, as your attorney just stated, it
 5 was the Board of Selectmen who denied your
 6 permit for the septic, correct, initially? Do
 7 you know?
 8 A. I don't recall.
 9 Q. Do you know if any -- do you believe that
 10 anyone discriminated against you in denying
 11 that septic permit?
 12 A. It was said in court -- the judge said that the
 13 Town was being arbitrary and capricious. So
 14 based on that -- and the Town did not appeal
 15 the judge's decision either. They went
 16 along -- they agreed with him, evidently.
 17 Q. So it's your belief that the Town agreed with
 18 the judge's decision that they were arbitrary
 19 and capricious. And did it appeal --
 20 A. No.
 21 Q. -- that decision even with the DEP?
 22 A. Well, if they didn't agree, then they missed
 23 the deadline.
 24 Q. All right. Let me go back --

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1 A. And --
 2 Q. -- to the -- let me go back to the Board of
 3 Selectmen.
 4 A. Okay.
 5 Q. The Board of Selectmen denied your -- your
 6 permit for a septic system. Correct?
 7 MR. REVERE: Wait -- wait a second. I was
 8 wrong. It -- the selectmen did the '92.
 9 MS. ECKER: Yes.
 10 MR. REVERE: Okay. You're -- so I'm sorry.
 11 I -- I apologize. Then the Board of Health did
 12 the '96.
 13 MS. ECKER: That's correct.
 14 MR. REVERE: So I apologize.
 15 MS. ECKER: That's all right.
 16 MR. REVERE: Okay.
 17 Q. At some point in time in '96, the Board of
 18 Health denied your septic permit. Correct?
 19 A. I don't -- I don't remember. But I know --
 20 Q. It wasn't allowed.
 21 A. -- it went --
 22 Q. Right?
 23 A. -- to court.
 24 Q. Okay.

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1 A. Yeah. But I don't -- I don't remember like
 2 time frames or who --
 3 Q. Are you aware that --
 4 A. It was something.
 5 Q. Are you aware that town counsel was asked her
 6 opinion as to whether they -- they should
 7 approve the septic system?
 8 A. No. I don't know what they did.
 9 Q. Do you believe that the Board of Health, in
 10 reviewing your septic permit, followed the
 11 advice of town counsel in any way?
 12 A. I don't know who they conferred with.
 13 Q. And do you believe that the Board of Health
 14 discriminated against you in denying the septic
 15 permit?
 16 A. Yes.
 17 Q. Okay. And why is that?
 18 A. Everybody else down there had two or three
 19 or -- I believe Russ Zawaduk, in that area, I
 20 think his is a four-bedroom. Russ Zawaduk,
 21 Z-a-w-a-d-u-k, I think his is a four-bedroom.
 22 And the two Worthington homes are two-bedroom.
 23 And yet they're all in the same area, dune
 24 area. So, you know, I don't --

31 (Pages 284 to 287)

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|--|--|
| <p style="text-align: right;">Page 288</p> <p>1 Q. Are you aware of anyone else in the town of 2 Truro who had a one-bedroom restriction placed 3 on their property that was allowed to increase 4 the size -- 5 A. No. 6 Q. -- of their property? 7 A. I don't know anybody. 8 Q. And I believe that you wrote several of your 9 congressmen and state representatives 10 concerning the concerns you had with the Town 11 of Truro. Correct? 12 A. At some point, I did. 13 Q. And did they -- 14 A. We went to get documents. 15 Q. Well, did you write to Senator Kennedy to -- 16 complaining about the Town of Truro? 17 A. I don't remember. I may have. But I don't -- 18 I'd have to see something 'cause I don't 19 remember. 20 Q. Did any of the elected government officials 21 that you wrote to -- the congressmen and the 22 senators -- outside of the Town of Truro 23 respond to you, saying that they supported your 24 position that the Town of Truro was</p> | <p style="text-align: right;">Page 290</p> <p>1 not in a dune, and then, oh, you -- we're 2 issuing you your dock permit. They made that 3 decision. They made a commitment to myself and 4 to my attorney. And then they flipped. 5 And in reading the newspaper and hearing 6 go -- what's going on specifically in 7 Worcester, Mass., with certain politicians, you 8 can get anything you want for -- by making the 9 right contacts or doing whatever. And some of 10 them are in jail now or on their way. 11 Q. But specifically focusing on Truro and your 12 property, do you have any evidence that state 13 politics has played a role? 14 A. Again, like I said, DEP flipped. And -- 15 Q. Do you have any evidence -- 16 A. -- numerous people have said -- you know, 17 they -- they know that calls get made quite 18 often to DEP. And, all of a sudden, things 19 change. I mean -- and that happens in the 20 courts even up here, all over. I mean . . . 21 Q. Do you have any evidence of any specific phone 22 calls that were made to DEP causing them to 23 flip their decisions? No? 24 A. Not that -- on this here, right now? None that</p> |
| <p style="text-align: right;">Page 289</p> <p>1 discriminating or acting improperly concerning 2 your property? 3 A. I know that there was communication like with 4 the Army Corps, and they approved us. And 5 that's the federal agency. 6 Q. No. I -- I'm focusing on elected officials 7 that you corresponded with -- 8 A. Yeah. 9 Q. -- for -- 10 A. That's what I'm saying. I think like maybe if 11 it was Kennedy I spoke with or Rolph 12 (phonetic), because he's on the Cape, so I may 13 have. And we have our own -- in our own area. 14 And if they called anybody, it would be -- they 15 would have called the Army Corps. And the Army 16 Corps had agreed to our dock anyways. My 17 concern was -- and it still is -- state 18 politics. And we all know what's going on 19 there. 20 Q. What's going on in state politics that 21 affecting -- that's affecting your property? 22 A. That's affecting? Somebody, somehow, convinced 23 DEP to flip. When they made a decision three 24 times to give us a permit, twice that we're</p> | <p style="text-align: right;">Page 291</p> <p>1 I know of. But, again, our concern is, why did 2 they flip? 3 Q. Did you write to the attorney general, Thomas 4 Reilly, to investigate the Town of Truro? 5 A. I believe I did. 6 Q. Am what was -- what did you want Mr. -- 7 Mr. Reilly to investigate? 8 A. Why Brooke Newman has her permits and she 9 doesn't comply with DEP regulations and what's 10 going on in Truro. And I know that he had 11 called -- I was told by the building inspector 12 that he wanted to review the file. And I -- 13 Q. And do you know -- 14 A. -- I don't know what happened after that. 15 Q. Okay. Do you know if the attorney general ever 16 reviewed the file? 17 A. I don't know. 18 Q. Did you ever -- 19 A. I have not heard from -- 20 Q. Do you -- 21 A. -- either one of them about it. 22 Q. Have you ever spoken with anyone from the 23 attorney general's office? 24 A. I haven't heard from them.</p> |

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|--|---|
| <p style="text-align: right;">Page 292</p> <p>1 Q. And did you receive any correspondence back 2 from a Mr. Milkey, who is the chief of the 3 Environmental Protection Division at the 4 attorney general's office? Or who was. I 5 think he still is. 6 A. I don't remember his -- I don't remember. 7 Q. Do you remember receiving any correspondence 8 back from the attorney general's office 9 concerning your complaints and request for 10 investigation? 11 A. The only thing I remember is that they had 12 requested the file on Brooke Newman. And, 13 actually, the building inspector had said that. 14 And they were supposed to get together about 15 reviewing it, and I don't know what happened. 16 Q. Did you ever -- 17 A. I don't know if they came in or what. 18 Q. But, as far as you're aware, the attorney 19 general didn't find any wrongdoing. 20 A. Right. 21 Q. Correct? 22 A. I don't know what they've done with the case. 23 Q. All right. You have no evidence that the 24 attorney general found any wrongdoing.</p> | <p style="text-align: right;">Page 294</p> <p>1 Q. By the Ethics Commission? 2 A. Yes. Yes. 3 Q. And who specifically at the Ethics Commission? 4 A. I don't remember. It was a man. 5 Q. Do you have any documentation that that's the 6 Ethics Commission's finding? 7 A. Yes. 8 Q. Okay. And you've -- 9 A. I'm sure -- 10 Q. -- given that to your attorney? 11 A. Well, he's got my file. So whatever. 12 MR. REVERE: I've given you everything. 13 A. Whatever I have, he's got. 14 Q. Anything else that you believe -- 15 A. And also -- yes. Nick Brown, who was, as I 16 said, president of the Harbor Commission, 17 plunked his boat in the harbor. There's a 18 hundred-year wait list for a boat to be there. 19 And he is not on the wait list. And he was 20 told some -- to remove his boat. 21 Q. By the Ethics Commission? 22 A. By the Ethics Commission. 23 Q. Who specifically? 24 A. Whoever was at -- in charge of the area.</p> |
| <p style="text-align: right;">Page 293</p> <p>1 Correct? 2 A. Last I -- like I said, I don't know what 3 they've done with the case. I don't know if 4 they've reviewed it. 5 Q. You have nothing in writing from the attorney 6 general's or any document, telephone 7 conversation from anyone who works for the 8 attorney general's telling you that they found 9 any wrongdoing in the Town of Truro. Correct? 10 A. Not -- not to my recollection. 11 Q. Did you file a complaint with the Ethics 12 Commission concerning -- 13 A. Yes. 14 Q. -- the Town of Truro? And was that 15 investigated, as far as you know? 16 A. Yes. 17 Q. And is it your understanding that the Ethics 18 Commission found nothing wrong with the -- the 19 actions taken by individuals in the Town of 20 Truro? 21 A. They, most certainly, did find problems. 22 Q. Okay. What did the Ethics Commission find? 23 A. They weren't really seeing public information, 24 and they were ordered to.</p> | <p style="text-align: right;">Page 295</p> <p>1 Q. And how do you know that it was the Ethics 2 Commission that told Mr. Brown to remove his 3 boat? 4 A. I think it was the harbormaster told me that. 5 Q. And that's Mr. Breault? 6 A. No. Roderick. 7 Q. Roderick. I'm sorry. 8 A. Yes. And then he put it back in. And they -- 9 somehow, they found out about it. And they 10 told him, if you put it back in, they were 11 going to arrest him. So he's not been able to 12 put his boat back in. 13 Q. That's the Ethics Commission -- 14 A. Yes. 15 Q. -- you claim? Do you have any documentation 16 that the Ethics Commission ever made any 17 finding against the Town of Truro or its 18 employees? 19 A. Nick Brown was on -- like I said, the chairman 20 of the Harbor Commission. So ... 21 Q. What evidence do you have? Do you have any 22 documentation that the Ethics Commission found 23 against Mr. Brown? 24 A. Only what I was told.</p> |

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1 Q. Okay. No documents?
 2 A. I don't remember. But I know what I wa -- you
 3 know, that's what I was told.
 4 Q. And other --
 5 A. So I know that for a fact, and that the boat
 6 was there. It's been removed. And then it
 7 went back in, and then it was -- it's out now.
 8 So ...
 9 Q. Other than Mr. Roderick telling you this is
 10 what occurred, have you spoken with anybody
 11 from the Ethics Commission?
 12 A. There was some man there I -- I was in contact
 13 with.
 14 Q. And did that man tell you that they found
 15 against Mr. Brown?
 16 A. I believe he did.
 17 Q. And who was that man?
 18 A. I don't know. I don't know his name.
 19 Q. A lawyer?
 20 A. Huh?
 21 Q. Was he a lawyer for the Ethics Commission?
 22 A. I don't know people's background. No.
 23 Q. Okay. You have no documentation that the
 24 Ethics Commission found against anyone in the

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1 Town of Truro. Correct?
 2 A. Yes. I do.
 3 Q. What's the documentation?
 4 A. My documents. It's in with my documents.
 5 Q. Well, I will represent to you that I have
 6 looked at them; and there is nothing in there
 7 from the Ethics Commission saying that they
 8 found against the Town. In fact, just the
 9 opposite is true. They wrote you, saying that
 10 they weren't going to pursue an investigation.
 11 So if you have anything else, I'd recommend
 12 that you give it to your attorney, who will
 13 then give it to me.
 14 A. Well, I gave him what I had unless something
 15 was lost. But they told them they had to
 16 release information under the public
 17 information act or something. And they weren't
 18 doing that. And then they started giving me
 19 what I requested. And, again, they -- they
 20 haven't -- I requested information a couple of
 21 months ago, and I still haven't received it.
 22 Q. The public records, do -- do you recall that
 23 you wrote to a separate state agency requesting
 24 they assist you in obtaining public records,

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1 not the Ethics Commission?
 2 A. That is the Ethics Commission.
 3 Q. It's, actually, not. I'll represent to you
 4 there's a separate board that you appeal to to
 5 obtain public records, not the Ethics
 6 Commission.
 7 A. I thought that I -- the man in the Ethics
 8 Commission is the one who told me about getting
 9 public documents.
 10 Q. No. That -- that's another board. The name
 11 escapes me at the moment.
 12 A. Then I'm confused. Because that's who I --
 13 Q. And you --
 14 A. -- I remember talking with that person about
 15 getting public records.
 16 Q. And you've made numerous demands upon the Town
 17 for public records. Correct?
 18 A. Yes.
 19 Q. And in your demands -- well, let me put it this
 20 way: Your demands began in 1996 for public
 21 records from the Town. Correct?
 22 A. I don't remember.
 23 Q. Okay. And, in your request, you always
 24 insisted that they swear under oath that these

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1 were public records. Correct?
 2 A. I don't remember.
 3 Q. And, in fact, the Town has provided you with
 4 records; but they've requested that you put
 5 your request in writing. Correct?
 6 A. Even when I have, I don't get public records.
 7 And I still, like I said, months ago, I put in
 8 writing; I have not received public records.
 9 Q. The Town has responded and requested that you
 10 pay for the records, correct --
 11 A. Yes.
 12 Q. -- the copying?
 13 A. Uh-huh.
 14 Q. Okay. And have you paid on every occasion?
 15 A. Yes.
 16 Q. And you say there's an outstanding public
 17 records request?
 18 A. Yes.
 19 Q. And who's that to?
 20 A. The Board of Health.
 21 Q. Okay. And what are you seeking?
 22 A. The records for the yacht club's so-called
 23 septic system and well that they have now on
 24 their property.

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1 Q. And who did you address the --
 2 A. As --
 3 Q. -- letter to? The Board of Health?
 4 A. Yes.
 5 Q. Okay. And did the Board of Health tell you how
 6 much it would cost to copy and --
 7 A. I have not heard from them.
 8 Q. Any other public records request out there?
 9 A. Also regarding the propane gas tanks at the
 10 yacht club. I think that -- that letter was
 11 also sent to Conservation Commission. They
 12 have propane gas tanks right outside, right
 13 close to our property line, within a foot of
 14 our property line. Did not go through
 15 Conservation Commission. They appeared, I
 16 believe, last year.
 17 And they told -- they said to the
 18 Conservation Commission, oh, they've a --
 19 they -- that we replaced them. And like, they
 20 didn't replace anything. Because I've got
 21 pictures, and they're right here. There's no
 22 propane gas tanks. I mean -- and we have
 23 pictures from every year. But they don't go
 24 through Conservation Commission. Conservation

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1 Commission closes their eyes.
 2 They have a so-called septic system. Our
 3 documentation shows that they have a cesspool.
 4 We -- we've got pictures of excavation going on
 5 there. DEP's done nothing about it. In fact,
 6 they were standing -- they're in one of the
 7 pictures. They've done nothing about it. They
 8 do what they want.
 9 Q. Do you believe that Mr. Breault discriminated
 10 against you?
 11 A. Definitely.
 12 Q. Okay. What did he do to discriminate you when
 13 he was town manager?
 14 A. He did what boards told him to do. And one of
 15 them was stopping me from my dock.
 16 Q. And what did Mr. Breault specifically do to
 17 discriminate against you?
 18 A. Prepared a letter to stop me from my dock, that
 19 it would interfere with navigation and
 20 blah-blah-blah.
 21 Q. Do you know if he did that on advice of
 22 counsel?
 23 A. He did it on advice of the Harbor Commission.
 24 I believe they composed it themselves. It

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1 wasn't through town counsel.
 2 Q. Anything else that Mr. Breault did to
 3 discriminate against you?
 4 A. Tell people not to talk to us, issued permits,
 5 did not enforce regulations of violations going
 6 on with the abutters. Only for us.
 7 Q. You understand that Mr. Breault doesn't issue
 8 permits, correct, or did not when he was town
 9 manager? Correct?
 10 A. He's in charge of -- he was in charge of
 11 running the Town and the departments. They all
 12 fell under his control.
 13 Q. Do you have any evidence that Mr. Breault held
 14 any malice or ill will towards you?
 15 A. In his treatment of us.
 16 Q. How?
 17 A. How?
 18 Q. What evidence?
 19 A. Again, our dock, stopping us from our dock,
 20 allowing the Town to charge us seven times the
 21 yacht club.
 22 Q. Do you have any evidence that Mr. Breault ever
 23 made any discriminatory statements against you?
 24 A. Statements?

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1 Q. Yes.
 2 A. Actions. Statements, no; actions, the actions
 3 are there.
 4 Q. The actions are what? Other than denying you
 5 your permits, anything else?
 6 A. Treating people inconsistently.
 7 Q. Okay. How did Mr. Breault himself treat you
 8 inconsistently? Not what the other boards did.
 9 You've told me about the other boards.
 10 A. Well, the yacht club did not have a permit.
 11 They didn't have a license for their dock.
 12 They were -- everything was fine with them.
 13 Ignore them. They did not -- they're not
 14 supposed to be serving liquor there. They're
 15 not supposed to have more than 25 people there
 16 at a time.
 17 They're only supposed to be open so many
 18 days a year. Last year -- last year or the
 19 year before, get the -- last year, get a
 20 printout of the dates that they told
 21 Conservation Commission through the state
 22 mandate of the dates that they can be open.
 23 With -- a couple of days after they gave that
 24 to the Town, they were open for a party.

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1 I called the police department. I said, I
 2 just want you to put it on record that you're
 3 seeing a party there and that there's, you
 4 know, whatever people there, numerous people
 5 there. I said, But it's not on this calendar,
 6 which is -- it's not that things change --
 7 Q. I'm -- I'm --
 8 A. -- in a couple of days.
 9 Q. Let me -- let me stop you, not -- not to cut
 10 you off. I'm focusing specifically on
 11 Mr. Breault. What has Mr. Breault done that
 12 you believe evidences that he holds some malice
 13 or ill will towards you?
 14 A. He's treating me -- treated me differently than
 15 other people.
 16 Q. Other than the yacht club and Ms. Newman, who
 17 else?
 18 A. Right.
 19 Q. Anyone else?
 20 A. Those are my only concerns right now.
 21 Q. What about the current town manager, do you
 22 think she's treated you differently or
 23 discriminated against you in any way?
 24 A. I have not been in communication with her. The

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1 actions, I think, were all done before she came
 2 on board.
 3 Q. When -- you purchased the property in 1996.
 4 Correct?
 5 A. Yes.
 6 Q. When's the first time you filed a complaint
 7 against the Town?
 8 A. Probably when they charged me seven times the
 9 price of the yacht club for my floats.
 10 Q. So that was several months after your purchase?
 11 A. I would say.
 12 Q. When's the first time after your purchase of
 13 the property that you began to complain to the
 14 Town about the yacht club?
 15 A. Well, it would be when I was charged \$2,100;
 16 and they were charged \$300 for the same amount
 17 of floats.
 18 Q. How many complaints have you filed with the
 19 Town, any department of the Town, concerning
 20 the yacht club and actions there?
 21 A. I have no idea.
 22 Q. A lot? Would you characterize it as numerous
 23 complaints about the yacht club?
 24 A. If there was a violation, I would notify them.

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1 Q. When you purchased the property in '96, did you
 2 immediately begin to rent it out?
 3 A. No.
 4 Q. Okay. When did you first begin to rent out the
 5 property?
 6 A. I don't remember. I know people had begged us
 7 to buy it from us.
 8 Q. Who offered to buy it from you?
 9 A. Yes.
 10 Q. Who?
 11 A. I don't know.
 12 Q. How much did they offer to pay?
 13 A. Oh, there was no discussion. We just said
 14 we're not selling this.
 15 Q. How much income did you earn from the rental of
 16 the property in 1996?
 17 A. I don't remember.
 18 Q. Do you have any documentation of income you've
 19 earned from the property since the time you
 20 purchased it?
 21 A. I might have some records.
 22 Q. Do you enter into rental agreements with people
 23 who rent the property from you?
 24 A. Like contracts?

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1 Q. Yeah.
 2 A. No.
 3 Q. Okay. Do you claim it on your taxes as rental
 4 income?
 5 A. (Witness indicates).
 6 Q. So if I were to look at your taxes or your
 7 attorney were to look at them, he'd be able to
 8 tell me how much you've earned from the rental
 9 of the cottage?
 10 A. He should.
 11 Q. Do you recall how much you earned last year
 12 from the rental of the property?
 13 A. No.
 14 Q. How much do you charge per week?
 15 A. It depends.
 16 Q. When you purchased the property, did Mr. Brown
 17 tell you how much you could charge or how much
 18 you might be expected to earn from the rental
 19 of the property?
 20 A. I don't -- I don't believe so.
 21 Q. When you purchased the property, did you plan
 22 to rent it out?
 23 A. No.
 24 Q. Have you had the property assessed for resale

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1 at all?

2 A. We're not selling it yet. It's our -- our --

3 our intent was just to keep it for us. And

4 then I got seriously injured in '97 and was

5 bedridden. And I can't be alone. And my

6 husband works. So we go down there when we

7 can. But it -- you know, my life has changed

8 drastically.

9 Q. So that's when you began to rent it out --

10 A. That was the reason.

11 Q. -- after your injury?

12 A. Yeah.

13 Q. Okay.

14 A. Well, we may have rented it in '96 just as a

15 transition time. I don't even remember. But I

16 know, in '97, when I went down there, I -- I

17 had to be carried. You know, they carried me

18 in my wheelchair. So it was pretty difficult.

19 Q. I'm almost done. If you could take a look

20 at -- and let's see what I did with it --

21 Exhibit No. 7 and, specifically, your answer to

22 Interrogatory No. 6. I hope they're in the

23 right order.

24 A. That's what I'm wondering.

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1 Q. I'm not a good administrative --

2 A. Can I --

3 Q. -- assistant. Do you want me to find it for

4 you?

5 A. I found 5. It should come after 5. Here's

6 something here. You'd better find it. I'm

7 sorry.

8 (A brief discussion was held off the

9 record.)

10 A. Oh, okay.

11 Q. Take a look. I asked -- well, the

12 interrogatory asks if you would specify the

13 damages you claim you have suffered.

14 A. Uh-huh.

15 Q. Okay. And here you say, about two sentence --

16 three sentences in, "A waterfront home of the

17 size proposed by the Plaintiffs with a pier in

18 an exclusive area of Cape Cod rents for \$10,000

19 per week during the summer." When you

20 purchased your home, it was not the -- the --

21 the construction hadn't been approved.

22 Correct?

23 A. Right.

24 Q. So you had no expectation that you would be

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1 able to get that construction approved at the

2 time. No one told you you would be able to.

3 Correct?

4 A. In '96?

5 Q. Yes.

6 A. It was -- we were still in the process. So

7 nothing had been decided.

8 Q. Has ever -- anyone ever told you that you can

9 rent your property out for \$10,000 a week as it

10 is currently situated?

11 A. As it is now?

12 Q. Yeah.

13 A. No.

14 Q. Okay. And how do you get the figure that your

15 property would be, if we -- the construction

16 were allowed, the renovation were allowed, be

17 able to rent it out for \$10,000 per week?

18 A. Being told by people what rents are going for

19 on the water, especially with a dock, you know.

20 Q. Any realtor told you that?

21 A. I have not spoken with one.

22 Q. Okay. Has your -- the property of your

23 value -- the value of your property from the

24 time you purchased it been diminished in any

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1 way by the Town's decision or decisions?

2 A. Yes.

3 Q. How?

4 A. How?

5 Q. Yeah.

6 A. The dock alone is extremely valuable. So

7 that's diminished the -- if I were to sell my

8 house, that has diminished the value of the

9 property in itself. Having that cottage there,

10 a 20-by-20 with no bedroom in it, and not a

11 livable house has diminished the property value

12 immensely.

13 Q. The property as it exists today is in the same

14 condition, correct, as when you purchased it?

15 A. Yeah. Uh-huh.

16 Q. Okay. So has the property value, in your

17 opinion, changed at all if it's in the same

18 condition?

19 A. Well, the -- we were told that we could use our

20 floats. So that stopped us from our dock. And

21 that was what we were told when we bought the

22 house. And that guy happened to be president

23 of the Harbor Commission. So...

24 Q. Okay. And you were told that by Nick Brown.

| Page 312 | Page 314 |
|---|--|
| <p>1 Correct?</p> <p>2 A. Uh-huh. President of the Harbor Commission.</p> <p>3 Q. And you haven't had your property assessed to</p> <p>4 see if, in fact, the property value has been</p> <p>5 diminished over the years?</p> <p>6 A. It's diminished from what -- if I were -- how</p> <p>7 do I say it -- if I were to put my plans up --</p> <p>8 you know, build my plans and my dock, that --</p> <p>9 Q. I'm talking, without the construction. As your</p> <p>10 property currently stands today, do you believe</p> <p>11 that it is worth less than at the time you</p> <p>12 purchased it?</p> <p>13 A. Well, because I had the dock then, yes.</p> <p>14 Q. And who has told you that? Any -- any realtor?</p> <p>15 A. Well, I just know that the value of that dock</p> <p>16 is priceless.</p> <p>17 Q. Okay. And the dock is the dock extension.</p> <p>18 Correct?</p> <p>19 A. Yes.</p> <p>20 Q. Okay. But the pier, as existed at the time you</p> <p>21 purchased it, still exists. Correct?</p> <p>22 A. Yes.</p> <p>23 Q. If you would flip the page, you go on in your</p> <p>24 answers to interrogatories to state,</p> | <p>1 when they told him or the Town Hall told him</p> <p>2 what to say, that we're the ones bringing all</p> <p>3 these lawsuits when we are not.</p> <p>4 In fact, we're responding to the Town's</p> <p>5 actions. I mean, we've gotten to the point</p> <p>6 where, you know what, guys? We're not going to</p> <p>7 sit back.</p> <p>8 Q. Have any of your treating physicians told you</p> <p>9 that any actions of the Town has caused you</p> <p>10 physical injury?</p> <p>11 A. I have been told that stress aggravates the</p> <p>12 condition.</p> <p>13 Q. Who has told you that?</p> <p>14 A. Every doctor I've gone to.</p> <p>15 Q. I need a specific doc- -- name of the doctor</p> <p>16 who has told you that the Town's actions has</p> <p>17 aggravated or caused any of your physical</p> <p>18 injuries.</p> <p>19 A. They've told me about the stress fac- -- the</p> <p>20 stress factor impacting the dystrophy.</p> <p>21 Q. Who?</p> <p>22 A. Every doctor I've gone to. Dr. Rubin,</p> <p>23 Dr. Steinberg, Dr. McKee.</p> <p>24 Q. And they have specifically related the</p> |
| Page 313 | Page 315 |
| <p>1 "Furthermore, the Allens have suffered damages</p> <p>2 to reputation and emotional distress due to</p> <p>3 over nine years of fighting with the Town to</p> <p>4 obtain permits. This distress has caused</p> <p>5 physical and mental injury to the Plaintiffs,</p> <p>6 which they value at 1.7 million dollars."</p> <p>7 A. Uh-huh.</p> <p>8 Q. Do you read that?</p> <p>9 A. Yes.</p> <p>10 Q. What physical injury has you -- have you</p> <p>11 suffered as a result of the Town's actions?</p> <p>12 A. With my physical health, stress aggravates it</p> <p>13 immensely. And my problems, not having a</p> <p>14 comfortable place to -- to stay in, not getting</p> <p>15 use of my dock -- I can't use it; I can't get</p> <p>16 on a boat if I wanted to -- having people talk</p> <p>17 about you, you know --</p> <p>18 Q. Has any --</p> <p>19 A. -- like we're the bad guys. I mean, I know</p> <p>20 like there was just an article in the newspaper</p> <p>21 that we're stopping the Town from dredging.</p> <p>22 But nobody explains what's going on down there,</p> <p>23 that, you know, they -- they -- they -- the</p> <p>24 reporter said -- and I'm sure the town lawyers,</p> | <p>1 exacerbation of your injury or the stress to</p> <p>2 the actions taken by the Town?</p> <p>3 A. That's the stress I'm under.</p> <p>4 Q. You're under no other stress?</p> <p>5 A. I've got a beautiful family. We have no</p> <p>6 problems. So I mean, believe me. I -- you</p> <p>7 know, when I go down there now, I can feel the</p> <p>8 pain getting worse myself. And when I'm down</p> <p>9 there, I don't even leave the house. They --</p> <p>10 they'll go to the beach, and I'm in the house</p> <p>11 alone. And, you know --</p> <p>12 Q. If I were to get your medical records, there</p> <p>13 would be an indication in your treatment notes</p> <p>14 that a doctor told you that you have suffered</p> <p>15 an exacerbation of your physical injuries</p> <p>16 because of the actions of the Town?</p> <p>17 A. I don't know what's in my medical records. I</p> <p>18 don't. Well, I -- I know that stress</p> <p>19 aggravates the situation, you know. So . . .</p> <p>20 Q. Have you treated with any mental health care</p> <p>21 providers for your alleged emotional distress</p> <p>22 caused by the Town?</p> <p>23 A. No.</p> <p>24 Q. You've not treated with a psychologist?</p> |

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1 A. For the Town?
 2 Q. Are you -- are you treating with a
 3 psychologist?
 4 A. No.
 5 Q. Psychiatrist?
 6 A. No.
 7 Q. Social worker?
 8 A. No.
 9 Q. No mental health counseling whatsoever?
 10 A. I see a pain doctor in Boston. I see a pain
 11 doctor in Enfield, Connecticut. And --
 12 Q. Just no men- -- no mental health care?
 13 A. None.
 14 Q. Do you take any prescriptions for mental health
 15 or for stress?
 16 A. I -- no. I don't. I just -- I'm afraid of
 17 medicine. So -- but I'm on a lot of narcotics.
 18 And when I'm under stress, I take more. But I
 19 do know that.
 20 Q. Okay.
 21 A. And I'll be honest with you. Since -- in
 22 February, when this -- these articles -- around
 23 February when these articles -- it was this one
 24 when the article came in the newspaper about

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1 us, you know, with the dredging and all that,
 2 up with the pain; and the doctor had to
 3 increase my pain medicine. And I'm like --
 4 Q. And you believe -- you believe that's related
 5 to the Town's action?
 6 A. It's as soon as -- as soon as the stress comes
 7 in, it gets worse.
 8 Q. And which doctor is that that increased your
 9 pain medication?
 10 A. Dr. Pierangelo. That's what happened to me two
 11 weeks ago.
 12 Q. And where is he located?
 13 A. Connecticut.
 14 Q. Where in Connecticut?
 15 A. Enfield.
 16 Q. What type of doctor is he?
 17 A. Arthritis, rheumatologist, pain. I try not
 18 to -- I'm scared of the medication. I'm very
 19 scared of it. So I just -- John can tell you;
 20 I spend most of my time in bed or on the couch.
 21 And I get up like to cook and, you know, putter
 22 around a little bit. But I try to keep myself
 23 as relaxed as possible. Because if I can do
 24 that, then I can, you know, take less, which,

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1 you know -- because this medicine, it's going
 2 to kill me eventually.
 3 Q. How many revisions of your renovation plans
 4 have you filed with the Town of Truro?
 5 A. Every time -- every time they told us to revise
 6 it, we've revised it. So I don't know.
 7 Q. Have you ever changed the size of the structure
 8 that you were proposing on your plans? Or has
 9 it always been what's depicted in --
 10 A. Well, we went to like a mediation or something.
 11 So we were trying to. But, you know, that went
 12 nowhere. So we're sticking with our plans as
 13 they are.
 14 Q. Okay. So when you first proposed renovation to
 15 your home, is the plan that appears in
 16 Exhibit 10 the size of the structure you
 17 proposed?
 18 A. Well, I think we sketched something out, as I
 19 told you before, just to go through the Rivers
 20 Act, to apply before the Rivers Act. And then,
 21 after that, we had formal plans drawn up by
 22 Felco. And I don't remember the dates.
 23 MS. ECKER: Okay. I don't have any further
 24 questions.

Page 319

1 (Whereupon the deposition was suspended at
 2 12:31 p.m.)
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SIGNATURE PAGE

I, BARBARA CORDI-ALLEN, do hereby certify that I have read the foregoing transcript of my testimony, and I further certify that said transcript is a true and accurate record of said testimony.

Dated at _____, this _____ day of _____, 2006.

BARBARA CORDI-ALLEN

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ERRATA SHEET

CHANGES TO THE DEPOSITION OF JOHN E. ALLEN
INSTRUCTIONS TO WITNESS: 1) Please note any desired corrections to your testimony by page and line number. 2) Enter text as it appears in the transcript. 3) Enter text as it should appear.

| PAGE | LINE | CORRECTION |
|------|------|------------|
| 6 | | |
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CERTIFICATE

COMMONWEALTH OF MASSACHUSETTS
COUNTY OF NORFOLK, ss.

I, Jo Anne M. Shields, a Professional Shorthand Reporter and Notary Public in and for the Commonwealth of Massachusetts, do hereby certify that BARBARA CORDI-ALLEN, the witness whose deposition is hereinbefore set forth, was duly sworn by me and that such deposition is a true and accurate record, to the best of my knowledge, skills and ability, of the testimony given by such witness.

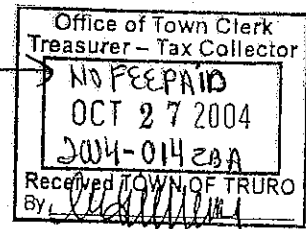
I further certify that I am not related to any of the parties in this matter by blood or marriage and that I am in no way interested in the outcome of this matter.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my seal of office this 21st day of April, 2006.

Notary Public

My Commission expires:
September 29, 2006.

LAW OFFICES OF PAUL REVERE, III
226 River View Lane
Centerville, Massachusetts 02632
(508) 778-7126



Via Federal Express

October 26, 2004

Town Clerk
Town of Truro
24 Town Hall Road
Truro, Massachusetts 02666

Zoning Board of Appeals
Town of Truro
24 Town Hall Road
Truro, Massachusetts 02666

RE: Appeal of Denial of Request For Enforcement
3 Yacht Club Road -- Brooke Newman

Dear Town Clerk and Zoning Board of Appeals:

This letter is written on behalf of Barbara and John Allen (collectively the "Allens") who own property located at 5 Yacht Club Road and who are aggrieved by the decision of the Building Commissioner discussed below.

In particular, by letter dated July 26, 2004, I on behalf of the Allens requested pursuant to M.G.L. ch. 40A, Sec. 7 and Section X-3 of the Truro Zoning Bylaw that the Building Commissioner, Thomas J. Wingard, Jr., to enforce your zoning bylaw against Brooke Newman at 3 Yacht Club Road by revoking the building permit issued to Ms. Newman on October 28, 1998, and/or requiring her to apply for a Special Permit or variance from the Truro Zoning Board of Appeals for the additions allowed under the building permit.¹ I have attached a copy of this letter as Exhibit One.

On October 19, 2004, the Building Commissioner responded upholding the issuance of the building permit and concluding that a Special Permit or variance was not required to be issued for the property. I have attached a copy as Exhibit Two.

Please consider this letter a notice of appeal required by Section X-G of your bylaw and M.G.L. ch. 40A, Sec. 8. The basis for the appeal are set forth my letter attached as Exhibit One which are:

1. A special permit or variance was required to move the building and

¹ It is also my understanding that the building ultimately constructed on the property was raised from the top of foundation elevation of 12.3 feet to a top of foundation elevation of 14.0 feet at some time after the building permit was issued as Ms. Newman obtained approval in February, 1999, to construct and did construct a septic system which required a top of foundation elevation of 14.0 feet. It is unclear as to whether the building department ever modified the building permit to adopt such changes.

LAW OFFICES OF PAUL REVERE, III
226 River View Lane
Centerville, Massachusetts 02632
(508) 778-7126

Via Federal Express

October 26, 2004

Town Clerk
Town of Truro
24 Town Hall Road
Truro, Massachusetts 02666

Zoning Board of Appeals
Town of Truro
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construct the addition as the lot on which the property was located was less than 33,750 square feet.

2. The Building Commissioner did not have authority under Section VIII-B.2 of the Bylaw to issue building permit.

Additionally, given that the Building Commissioner states in his response that the permit was issued pursuant to Section VIII-B.2, but cites no record to support it, the Allens also appeal on the basis that there is no "determin[ation]" or "find[ing]" by the Building Commissioner that the movement of the building and addition "will not be substantially more detrimental to its neighborhood. Therefore, the issuance of the building permit was procedurally defective.

I have enclosed three copies of this letter to be certified by you as to the date and time which this appeal has been filed. Please forward one copy to the Building Commissioner and the Zoning Board of Appeals. Please return the remaining copy to me in the enclosed envelope.

Please contact me at (508)778-7126 if you have any questions.

Very truly yours,



Paul Revere, III

cc: Barbara Cordi-Allen
Michael Leon (Attorney for Brooke Newman)

EXHIBIT ONE

LAW OFFICES OF PAUL REVERE, III

226 River View Lane
Centerville, Massachusetts 02632
(508) 778-7126

July 26, 2004

Building Commissioner
Town of Truro
P.O. Box 2030
Truro, Massachusetts 02666

**Certified Mail
Return Receipt Requested**

RE: Request For Enforcement -- Brooke Newman
3 Yacht Club Road

Dear Mr. Commissioner:

This letter is written on behalf of Barbara and John Allen who own property located at 5 Yacht Club Road. In October, 1998, your office issued a building permit to Brooke Newman for an immediately adjacent property located at 3 Yacht Club Road. A copy of the application for the building permit and a plan of the land is attached as Exhibit One. I have been engaged by the Allens to review various matters relating to their property at 5 Yacht Club Road and have written this letter to request that you revoke the building permit issued in October, 1998, for the reason that Ms. Newman has never obtained a special permit or variance from the Truro Zoning Board of Appeals for the additions allowed under the building permit. This request is made pursuant to M.G.L. ch. 40A, Sec. 7 and Section X-3 of the Truro Zoning Bylaw, both of which require a response within 14 days.

In particular, the lot upon which Brooke Newman's house is located is approximately 23,500 square feet. Currently and at the time of the building permit application, the Truro Zoning Bylaw requires a minimum lot size of 33,750 square feet. Section VII.B.1 provides:

Lawful preexisting, non-conforming structures and uses may, when a variance would otherwise be required, be altered, or extended with a special permit if the Board of Appeals finds that the alteration or extension will not be substantially more detrimental to the neighborhood than the existing nonconforming structure or use and that the alteration or extension will exist in harmony with the general purpose and intent of the bylaw.

Here, Ms. Newman has moved the location and increased the foot print of and added

a second story to her building on a non-conforming lot. These changes to the building trigger the need to obtain a special permit under Truro's Zoning Bylaw.¹ However, Ms. Newman did not obtain a special permit prior to obtaining the building permit. Therefore, I hereby request that you revoke the building permit for this structure.

To assist you in rendering your decision, I have attached copies of various correspondence from Zisson and Veara relative to lots in this area and the special permit issued by the Zoning Board of Appeals for the property immediately adjacent to the north as Exhibit Two.

As I see, you simply have no choice, but to revoke the building permit if the Town of Truro intends to apply its Zoning Bylaws equally to all property owners and have the Allens apply for a special permit or variance when they build on their property. However, if you conclude that a special permit is not required for Ms. Newman, then the Allens should also need not obtain a permit if they substantially increase the square footage of their house and its footprint.

Please contact me at (508)778-7126 if you have any questions.

Very truly yours,

/s/

Paul Revere, III

cc: Barbara Cordi-Allen

¹ Section VIII-B.2 only allows the Building Commissioner to act when the applicant proposes "repair, reconstruction, alteration, or structural changes." Here, Ms. Newman proposed an "extension of the structure and use by the addition of the second story and the increase to the footprint.

EXHIBIT ONE

BY # YF-186

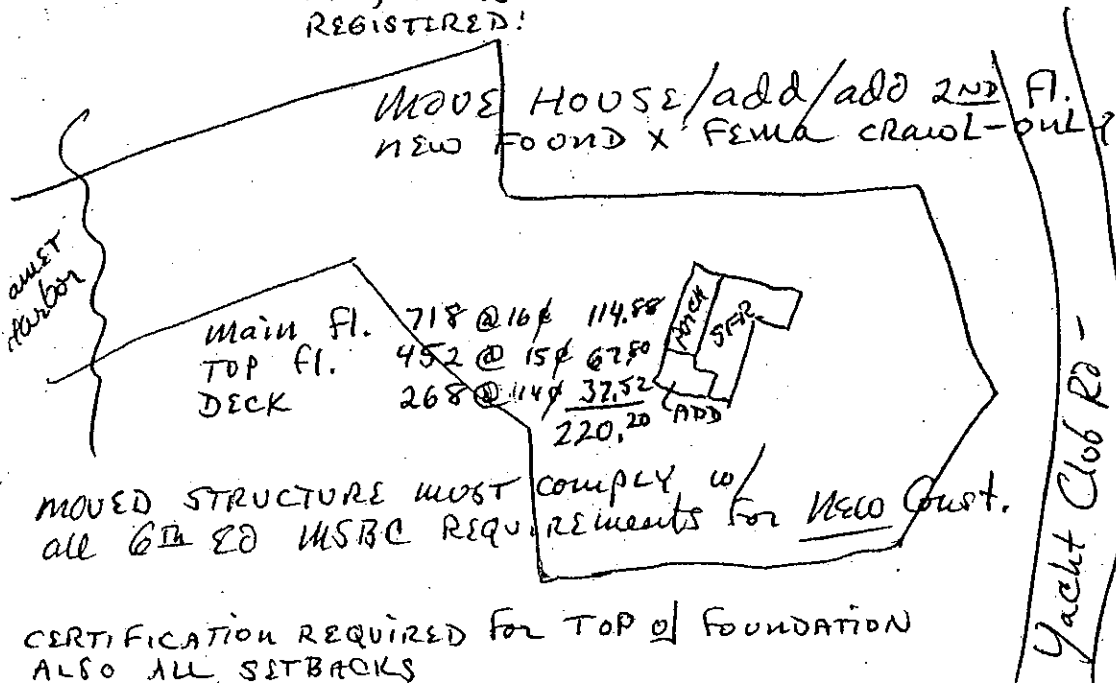
KLUG

SHEET 50

PARCEL 20

THE COMMONWEALTH OF MASSACHUSETTS
TOWN OF TRURO
APPLICATION FOR BUILDING PERMIT

Date 10/20/98 Board of Health Permit No. 98-108 Paid 220.20
BROOKE NEWMAN ROCKING FORKS DR ASPEN CO
3 Yacht Club Road NON RESIDENT ADDRESS
MICHAEL McGUIRE Box 555 No Truro MA 02652
ADJACENT TO:
 Explain in detail work being done NEW FOUNDATION, ADD SECOND STORY
RELOCATE DWELLING AS PER PLAN
 Is there any change of use NO
 Estimated Cost 45000 Type Chimney BRICK Firestops _____
 If this is a public building with over 35,000 cubic feet a Registered Architect's plan must accompany this application.
 Number of stories (exclusive of attic, basement, cellar) 2 Is there an attic NO
 basement _____ cellar _____ Height from mean ground level to: Coping of flat roof _____
 _____, deckline of mansard roof 20 Mean height level between eaves and ridge of
 gable, hip, or gambrel roof (max all 23 feet.) Height from mean ground level to highest point gable, hip,
 or gambrel roof max 30 23
 Draw a diagram showing—1. Shape and dimensions of lot and area (in square feet). 2. Streets.
 3. Existing buildings—if any and any new building or addition. 4. Distance of new or existing building
 to all lines of lot.
0.54 CON COM REVIEW / DEP SUPERCEDED /
MAY 22-98
REGISTERED!



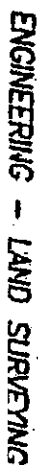
I certify that the above statements are correct and that all work done will comply with all By-Laws, Board of Health Regulations, and Fire Engineers Regulations of the Town of Truro. The Applicant agrees to give the Building Inspector notice before enclosing the studding on this building.

This permit is issued by the Town of Truro in accordance with the Truro By-Laws. However if property is within the boundaries of the Cape Cod National Seashore Park, the applicant is advised to clear this permit with the National Park Service, Eastham, Massachusetts before starting construction.

X [Signature] 072958 Signature of Applicant or Agent
[Signature] Signature Planning Board
[Signature] Signature Building Inspector

0-28-98
DATE

Accepted ✓ Refused _____ Reason _____



FELCO, INC.

8-25-98

REFERENCE

UNREPAIRED
FOR:

LOCUS: 21-73

SITE

EXHIBIT TWO

ZISSON AND VEARA
ATTORNEYS AT LAW

RICHARD L. ZISSON
EDWARD E. VEARA
JILL J. BROFSKY
E. JAMES VEARA
PAUL V. BENATTI
SARAH A. TURANO-FLORES
JOHN R. COSTELLO
BENJAMIN E. ZEHNDER
LORI CURTIS KRUSELL
ALANNA D. BRAVMAN
LISA M. WESTERVELT*

865 PROVIDENCE HIGHWAY
DEDHAM, MASSACHUSETTS 02026-6825
TEL (781) 329-1110
FAX (781) 329-5119

828 MAIN STREET-BOX 2031
OLD KINGS HIGHWAY
DENNIS, MASSACHUSETTS 02638-0043
TEL (508) 385-6031
FAX (508) 385-6914

*ALSO ADMITTED IN NEW YORK

April 5, 2002

William W. Thomas
Thomas & Bailey, P.C.
100 West Main Street; P.O. Box 978
Hyannis, Massachusetts 02601

**Re: Town of Truro, et al. v. Department of Environmental Protection and John Allen
and Barbara Cordi-Allen; Barnstable Superior Court C.A. No. 2001-347**

Dear Attorney Thomas:

In connection with our conference the other day regarding potential settlement of the above-referenced case, I have researched the Town of Truro's Zoning Code and can report to you the following. In determining the zoning requirements, I utilized the Site and Sewage Plan prepared for John Allen, dated September 11, 1996, and last revised through December 20, 1999. A true and accurate copy of this site plan is enclosed for your ease of reference. I also reviewed the JP Kelley floor plans drawn for the Allens, as indicated below. Please be advised that this is my own analysis, based on what little information I have, and prepared solely for purposes of settlement. Obviously, the Truro Building Inspector and Zoning Board of Appeals have the ultimate authority in making the final determination in this instance.

The Allen proposal includes renovating the existing 20' x 20' dwelling on the property by turning it sideways, raising it on pilings, and adding a 12' x 17', two story addition. From what I can gather from the floor plans drawn by J.P. Kelley, dated July 12, 1999, as revised through October 14, 1999, the footprint for the new structure, including sun deck and porch, is 888, with a total new living area of 1,044 square feet. The proposal includes the removal of an existing kitchen, apparently in effort to avoid classifying this structure as a second dwelling unit. The final floor plan purports to include only a great room and bath on the first floor, and a single bedroom on the second floor.

The Allen proposal then calls for the construction of an entirely new, two-story, second structure on locus. The footprint for this second structure is 2,648 square feet. The JP Kelley

ZISSON AND VEARA

Attorney Thomas

April 5, 2002

Page 2

Floor Plans, dated November, 1999, indicate that this second structure purportedly contains only two more bedrooms, however, it also indicates 3,300 square feet of living area, with a room called a "hall" that is actually 14' x 14', a "foyer" that is 10.6' x 18', a family and game room, a whirlpool room, a laundry room, two downstairs bathrooms, a great room, a breakfast nook, a kitchen, a master bedroom, a master bath, two walk in closets, a two car garage, and an elevated utility room. This dwelling is proposed on a solid concrete foundation with a concrete slab for the garage and utility room.

The proposal also includes an above ground pool with decking, but I understand the Allens have agreed to eliminate this from consideration. Presently, the proposal also includes a proposed septic system for a three bedroom dwelling with the use of a modified septic tank with a FAST™ insert, a pump chamber, and a leaching field with no reserve area. As I indicated to you in previous conversations, the FAST™ system is a problem because, as of September 15, 2001 and pursuant to a Consent Agreement with the Department of Environmental Protection, Smith & Loveless, the company that produces the FAST™ technology, will no longer accept any orders for provisional use units under Title 5. Unless the Allens have already purchased their septic system from this company, they will be unable to use this alternative technology and some other nitrogen enhanced system will have to be employed.

In addition to the fact that the FAST™ technology cannot be utilized, and in addition to the fact that the Allen proposal does not meet state Title 5 requirements for a three bedroom home (see the allegations contained in the Complaint filed in the Barnstable Superior Court in Case No. 01-347), or the requirements under the state Wetlands Protection Act for construction in a dune (see the allegations contained in the appeal filed with the Department of Environmental Protection, Case No. 75-371), I am also of the opinion it does not meet Truro zoning requirements.

Section IX of the Truro Zoning Bylaw contains the Area and Height Regulations for the town. Section IX(A)(1) states that no building shall be constructed on a lot with an area of less than 33,750 square feet. The Allens are proposing to construct a new building on a lot with an area of only 24,437 square feet. As such, they would require a variance from Section IX(A)(1) of the Zoning Bylaw. As there are no topography, soil conditions or shape issues that would justify a variance from this square footage requirement, I am of the opinion the Allens could not obtain a variance from this provision. In the matter of Tsagronis v. Board of Appeals of Wareham, 613 N.E.2d 893 (1993), the Massachusetts Supreme Judicial Court unequivocally held that hardship from failure to construct a house on undersized lot before statutory protections against zoning changes expired did not justify the granting of variance. As the subdivision plan creating their lot was put on record in November of 1972, and this provision of the zoning bylaw creating the 33,750 square foot requirement passed on August 7, 1972, the Allens are not entitled to any

ZISSON AND VEARA

Attorney Thomas

April 5, 2002

Page 3

grand fathering from this provision¹. Accordingly, the Allens are prohibited from building a second structure on this parcel.

As I indicated to you during our conversations, the Allens would be best served if they were to eliminate from their proposal the second structure altogether and simply renovate the existing structure by moving it back from the beach, raising it on pilings, making it comparable in size to the neighboring dwellings, and utilizing some form of nitrogen enhanced septic system. This would address the majority of the problems which currently plague the Allens' proposal, including state Title 5 and wetlands issues.

Such a proposal would, however, still require a Special Permit from the Zoning Board of Appeals under Section VIII(A) of the Zoning Bylaw and Massachusetts General Laws, Chapter 40A, Section 6. A Special Permit would be necessary because the Allens would be proposing the alteration and extension of a pre-existing, non-conforming structure (their structure is pre-existing, non-conforming because it presently sits on a parcel with less than 33,750 square feet in area). In order to obtain a Special Permit, the Zoning Board of Appeals would have to determine that the proposed renovated structure "will not be substantially more detrimental to the neighborhood than the existing nonconforming structure" and that "the alteration or extension will exist in harmony with the general purpose and intent of the bylaw." This is why the size of the proposed renovated structure (in comparison with the neighboring properties) is very important. The footprint of the Allens' existing structure is only 400 square feet in area. The footprint of the existing Landis structure is only approximately 420 square feet in area. The footprint of the newly renovated Newman structure is approximately 600 square feet in area. In contrast, the combined footprint of the current Allen proposal is 3,536 square feet in area. In my opinion, there are no circumstances under which even the proposed second structure (footprint of 2,648 square feet) would receive a Special Permit from the Zoning Board of Appeals. Its size of 5 times larger than any surrounding structure is just too large for a finding of "not substantially more detrimental to the neighborhood" and "in harmony with the general purpose and intent of the bylaw."

This does not necessarily mean that the Allens' proposal must involve a footprint of no greater than 600 square feet. The 600 square foot Newman structure only includes two bedrooms. The DEP approved the Allens for a three bedroom home. While the Town is contesting that approval, I am not averse to recommending to the Town that they settle that Superior Court case and the DEP wetlands proceeding pertaining to the house construction if the Allens come up with a moderately sized, realistically designed three bedroom floor plan. Obviously, such a proposal

¹ The first deed for this parcel was December 10, 1973, recorded in the Barnstable County Registry of Deeds in Book 1984, Page 313, which also post-dates the zoning amendment requiring 33,750 square feet of area. Prior to December of 1973, the Allen parcel was part of a larger, 3 acre parcel owned by the Worthingtons.

ZISSON AND VEARA

Attorney Thomas

April 5, 2002


Page 4

would still require a Special Permit from the Zoning Board of Appeals. A Special Permit would be much more likely to issue from the Zoning Board of Appeals if the Allens were to greatly scale down their proposal to a size more in keeping with the size of the neighboring structures, and perhaps slightly larger in order to accommodate the third bedroom.

As we discussed, if your clients devise a proposal with a single, more moderately sized structure located further back on the property, on pilings and with a nitrogen enhanced septic system, all currently pending litigation relating to the construction of the house could be settled. Provided the Allens keep the size of the single, three bedroom structure to a minimum, they would also be much more likely to obtain a Special Permit from the Zoning Board of Appeals and proceed with construction of their home.

Please carefully discuss these issues with your clients and report to me your progress. Thank you again for your time and consideration of these matters. I look forward to hearing from you in the near future.

Sincerely,



Sarah A. Turano-Flores

STF/

enc.

VIA FACSIMILE TRANSMISSION & 1ST CLASS MAIL

cc: Mr. Breault
Board of Selectmen
Truro Building Inspector, Mr. Vincent Corsano

THOMAS & BAILEY, P.C.

Attorneys At Law
100 West Main Street
Post Office Box 978
Hyannis, Massachusetts 02601

Telephone (508) 771-4644
Facsimile (508) 790-1334

William W. Thomas
Bradley J. Bailey

May 16, 2002

Zisson & Veara
828 Main Street, Box 2031
Dennis, Massachusetts 02638
Attn: Sarah A. Turano-Flores

MAY 17 2002

Re: Town of Truro et al v. Department of Environmental Protection and John Allen
and Barbara Cordi-Allen
Barnstable Superior Court Civil Action No. 2001-347

Dear Attorney Turano-Flores:

I have completed my initial inquiry into the legal status of the Allen lot. I met with the Planning Board secretary several days ago and we reviewed the Planning Board's records for 1972. I had previously been in touch with Slade & Associates, the firm that performed the engineering for John Worthington when he re-subdivided his land in 1972. Slade & associates checked their records and told me that they had a preliminary plan which had been submitted to the Planning Board in their file and they sent me a copy of it. The plan is entitled "Sketch of Re-Subdivision of Land in Truro Proposed by John C. Worthington, scale 40' = 1", May 1972, W.G. Slade, Surveyor, Truro, MA."

The Planning Board secretary had a file in which various plans for the Depot Road area were located. She produced from that file, two copies of the exact same plan that Slade & Associates had sent to me. I believe that there was also a copy of the definitive plan in that file as well. None of the plans that were shown to me had time stamps on them and there was no record anywhere in the minutes as to when any preliminary plans were received by the Planning Board. The actual minutes for 1972 are sparse, however, there was a certificate of approval showing that following a public hearing at the Truro Town Hall, the definitive plan for the John Worthington subdivision was approved. Enclosed is a copy of the certificate of approval. This apparently is the approval of our plan since the recorded plan at the Registry of Deeds shows that it was approved by the Truro Planning Board on September 28, 1972. The appeal period ran out on October 27, 1972 and the plan was recorded at the Barnstable County Registry of Deeds on November 29, 1972 in Book 264, Page 18.

The plan that was approved created Lots A, B and C, all of which were slightly over half an acre with the largest lot being the Allen lot at .561 acres, not including the area of the flats. The Town of Truro voted on August 7, 1972 to increase the lot size from 22,500 sq. ft with 150' of frontage, to 33,750 sq. ft. with 150' of frontage. The preliminary plan was apparently filed by Slade to protect the lot size and allow Mr. Worthington to get three lots out of this property.

**COPY FOR YOUR
INFORMATION**

THOMAS & BAILEY, P.C.

Zisson & Veara

May 16, 2002

Page 2

When one views the plan that was approved, it is clear that each of the lots was built upon at the time of approval and one of these pre-existing buildings makes up part of the Allen engineering plan. The Planning Board must have been cognizant of the fact that they were approving lots in September of 1972, which would be undersized had a preliminary plan not been filed. As you know, in the law there is a presumption of regularity. I presume that the Planning Board back in September of 1972 took an educated vote and they were well aware that this subdivision was controlled by the pre-August 7 zoning bylaw.

Under the typical subdivision case dealing with the filing of preliminary plans in face of a zoning change, the developer is trying to get the statutory protection so that he can build on smaller lots. In this instance, since the houses were already in existence, there was no need to get building permits within that 7 year period. In other words, the Worthington lots were legal in size because they were governed by the earlier bylaw and the buildings were legal as they met the required set backs and had been on the lots the date that they were created. Under the Truro bylaw that is presently in effect, VII (d) provides that "so long as buildings were constructed, uses were begun and lots were created lawfully, they may continue to be used in the same manner and for the same purposes despite contrary provisions of this bylaw. Lawful pre-existing, nonconforming structures and uses may when a variance would otherwise be required be altered or extended with a special permit if the Board of Appeals finds that the alteration or extension will not be substantially more detrimental to the neighborhood than the existing nonconforming structure or use and that the alteration or extension will exist in harmony with the general purpose and intent of the bylaw." The use of the Allen property for residential purposes clearly is in conformity for this zoning district. The question is whether the structure that's on the property is nonconforming. Structures fall into nonconformity when they are built too close to property lines or they are not set back far enough from the street, etc. This is not the case with the Allen property. To my knowledge, the present structure on the property meets all of the lot line set backs and has done so ever since the lot was created. The building sits on a lawfully created lot. It is not a nonconforming structure for which one needs to get a special permit. Under VIII it can be altered or improved like any other house that sits on a lot that was lawfully created. This was apparently the interpretation used by the previous building inspector when the plans were submitted for the renovations and alterations to Brooke Newman's structure. I do not believe that she was required to seek a special permit or a variance.

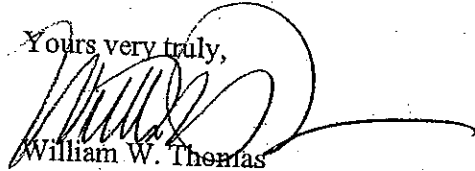
In light of the above, I am of the opinion that the Allens would be able to alter and improve their cottage provided they had permission from the Conservation Commission and the Board of Health regarding their septic system and provided that their improvements did not encroach in sideline set backs, without the need for a variance or special permit. The real question, I believe, is whether their design amounts to an alteration of the existing structure or the creation of a new structure. I have not completed my legal research in this area. Your

THOMAS & BAILEY, P.C.

Zisson & Veara
May 16, 2002
Page 3

thoughts on my interpretation of this problem and my legal evaluation, would be appreciated.
Thank you for your consideration.

Yours very truly,



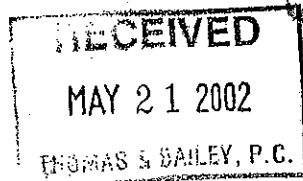
William W. Thomas

WWT/js

cc: Mr. & Mrs. Allen

ZISSON AND VEARA
ATTORNEYS AT LAW

RICHARD L. ZISSON
EDWARD E. VEARA
JILL J. BROFSKY
E. JAMES VEARA
PAUL V. BENATTI
SARAH A. TURANO-FLORES
JOHN R. COSTELLO**
BENJAMIN E. ZEHNDER
LORI CURTIS KRUSELL
ALANNA D. BRAVMAN
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828 MAIN STREET-BOX 2031
OLD KINGS HIGHWAY
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TEL (508) 385-6031
FAX (508) 385-6914

*ALSO ADMITTED IN NEW YORK
** OF COUNSEL

May 20, 2002

William W. Thomas
Thomas & Bailey, P.C.
100 West Main Street; P.O. Box 978
Hyannis, Massachusetts 02601

**Re: Town of Truro, et al. v. Department of Environmental Protection and John Allen
and Barbara Cordi-Allen; Barnstable Superior Court C.A. No. 2001-347**

Dear Attorney Thomas:

Thank you for your letter of May 16, 2002. If I understand it correctly, you are asserting that a preliminary subdivision plan dated May 1972 was most likely filed with the Town sometime before the zoning amendment change which took place in August 1972 and changed the area requirements from 22,500 to 33,750. Although you did not cite the statute specifically, I assume you are applying G.L. c. 40A, §6 in order to reach your conclusion that the lots are grandfathered from the zoning change by virtue of the May 1972 preliminary plan.

Assuming evidence exists demonstrating that the May 1972 plan was filed prior to August 1972, I am still of the opinion that the Allens' lot is not grandfathered from the 33,750 square foot area requirements. In my opinion, neither the local zoning bylaw or the state Zoning Act afford the Allen lot any protections from the current area requirements.

The Allens are proposing to alter, reconstruct, extend and structurally change the existing structure by turning it sideways, raising it on pilings, and adding a 12' x 17', two-story addition. They are also proposing to construct an entirely new additional two-story structure, with a 2,648 square foot footprint. They propose to do all of this on a lot that is only 24,437 square feet in area. As noted above, a preliminary plan exists dated May 1972. The zoning change was adopted in August of 1972. The plan was endorsed in September of 1972. It was recorded in November of 1972. The Allens parcel was not deeded out until December 10, 1973. Prior to that date, it was in common ownership as part of a larger, three (3) acre parcel owned by John Worthington.

ZISSON AND VEARA

Attorney Thomas

May 20, 2002

Page 2

Section 6 of Chapter 40A protects:

1. Structures lawfully in existence or lawfully begun prior to the first publication of the zoning change;
2. Building permits or special permits issued before first publication of the zoning change; and
3. Any alteration, reconstruction, extension or structural change to a structure lawfully in existence or begun prior to the first publication of the zoning change, provided that alteration, reconstruction, extension or structural change does not increase the nonconforming nature of said structure.

The Allens' proposal is not afforded protection under any of these provisions because it involves the construction of an entirely new structure *in addition* to the alteration, reconstruction, extension and structural change to the cottage that existed as of 1972. If the Allens were simply renovating the existing cottage, then I believe the third provision quoted above might apply. However, they are constructing an entirely new structure in addition to the existing structure. As such, none of the first three protections contained in G.L. c. 40A, §6 apply.

Section 6 goes on to provide that increases in area are inapplicable to lots for single family use which *at the time of recording or endorsement* were not held in common ownership with adjoining land, conformed to then existing requirements and had less than the proposed requirement but at least five thousand square feet of area and fifty feet of frontage. As stated above, the plan creating the Allen lot was not endorsed until September 29, 1972. The Allens' lot was held in common ownership until December of 1973. Thus, the Allens cannot avail themselves of this fourth protection under G.L. c. 40A, §6.

Section 6 also states that any increase in area shall not apply for a period of five years from its effective date, or five years after January 1, 1976, whichever is later, to a lot for single family residential use, even if the lot was held in common ownership at the time of recording or endorsement, provided certain additional requirements are also met. As we are now well beyond five years after January 1, 1976, the Allens cannot rely on this exemption to qualify for grandfathering from the current area requirements.

Finally, Section 6 states that if a definitive plan, or a preliminary plan, followed within seven months by a definitive plan, is submitted to a planning board for approval under the subdivision control law, and written notice of such submission has been given to the town clerk before the effective date of the bylaw, the land shown on the plan shall be governed by the bylaw in effect at the time of the first submission *for eight years from the date of the endorsement of such approval* or, for plans submitted and approved before January 1, 1976, *for seven years from the date of the endorsement of such approval*. Thus, even assuming there was evidence the preliminary plan was filed prior to August, and notice was properly filed with the Town Clerk,

ZISSON AND VEARA

Attorney Thomas

May 20, 2002

Page 3

the Allens' lot was only protected for seven years from the date it was endorsed, or seven years from September 28, 1972. We are well beyond 1979 at this point.

Accordingly, I must conclude that G.L. c. 40A, §6 affords your clients no protection from the current area requirements under Truro's zoning bylaw. You also cite, however, the Truro Zoning Bylaw for the proposition that the Allens' lot is protected. Specifically, you assert that the Allens' design is in conformity with the zoning district and doesn't even require a special permit.

The section of the local bylaw upon which you rely is similar to the first paragraph of G.L. c. 40A, §6. You correctly quote Section VIII(B)(1) of the Bylaw - although you use a different citation- as stating:

"Lawful, pre-existing, nonconforming structures and uses may, when a variance would otherwise be required, be altered or extended with a special permit if the Board of Appeals finds that the alteration or extension will not be substantially more detrimental to the neighborhood than the existing nonconforming structure or use and that the alteration or extension will exist in harmony with the general purpose and intent of the bylaw."

You state that the lot is being used for residential purposes and this is a lawful use in the district. You also state that the structure is not non-conforming because it meets all lot line setbacks. Thus, you conclude a Special Permit is not necessary because neither the use nor the structure are non-conforming. However, the non-conformity of the pre-existing structure is that it sits on a lot that is undersized. As such, any reconstruction of that pre-existing structure would require a Special Permit under Section VIII(B)(1).

In any event, and more importantly for this inquiry, it is Section IX(A)(1) of the Truro Zoning Bylaw, not VIII(B)(1), that specifically precludes the Allens' proposal from being lawful. This section states that *no building* shall be constructed on a lot with an area of less than 33,750 square feet. The Allens, in addition to renovating their existing structure, are also proposing to construct a building. Section IX(A)(1) prohibits such construction on a lot of the Allens' size. Section IX(A)(2) does provide grandfathering protection from this area requirement, however, it states that only lots "shown on a subdivision plan, or described by deed *duly recorded or registered in the Barnstable County Registry of Deeds prior to the adoption of this Bylaw*," are considered conforming. As the plan creating the Allens lot was not recorded until November of 1972, and the zoning amendment was adopted August of 1972, the Allens are not grandfathered from the area requirements of the zoning bylaw.

Thus, I must conclude that the Allens are not protected from current area requirements under either the local zoning bylaw or the state Zoning Act. You end your letter by stating: "The real question, I believe, is whether their design amounts to an alteration of the existing structure

ZISSON AND VEARA

Attorney Thomas

May 20, 2002

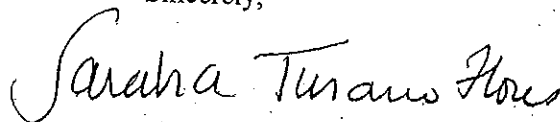
Page 4

or the creation of a new structure." The Allens are doing both. If they were simply taking their existing structure, and reconstructing it, then I believe they would be entitled to the third protection defined on the prior page provided the Zoning Board of Appeals found that the alteration, reconstruction, extension or structural change does not increase the nonconforming nature of said structure. However, the Allens are doing more than reconstructing the existing structure. They are also constructing an entirely new structure.

Accordingly, I am unable to agree with your opinion that the Allens are entitled to proceed with their current proposal as a matter of right, and without the need for any Special Permit or Variance. I must remain firm in my opinion that they are unable to proceed at all unless they revise their design entirely by omitting the second structure and re-designing and configuring the existing structure in such a manner that all wetlands, Title 5 and zoning issues are addressed. By zoning issues, I mean that their design may include only the reconstruction, alteration, extension, or structural change of the existing structure and that such reconstruction, alteration, extension or structural change is found by the Zoning Board of Appeals to not be substantially more detrimental to the neighborhood than the existing structure and to exist in harmony with the general purpose and intent of the bylaw.

This concludes my analysis to date. I appreciate your patience as we muddle through this complicated matter. Kindly review and contact me to discuss at your earliest convenience. Thank you.

Sincerely,



Sarah A. Turano-Flores

STF/

VIA FACSIMILE TRANSMISSION & 1ST CLASS MAIL

cc: Mr. Breault
Board of Selectmen
Truro Building Inspector, Mr. Vincent Corsano

AND BARBARA ALLEN

FAX NO. : 4135676678

Dec. 22 2003 10:23AM P2

DECISION OF THE BOARD OF APPEALS OF TRURO, MASSACHUSETTS

Property Owner(s) and/or Applicant(s): Sara Landis, by bldr/agt William VonThadenProperty Location: 80 Depot RoadAtlas Sheet: 50 Parcel: 19 Hearing Date: Monday, December 8, 2003

| | | |
|--------------------------------|-------------------------------------|--|
| Special Permit | <input checked="" type="checkbox"/> | Vote: <u>5</u> Approve <input checked="" type="checkbox"/> |
| Variance | <input type="checkbox"/> | <u>0</u> Disapprove <input type="checkbox"/> |
| Building Commissioner Decision | <input type="checkbox"/> | Abstain <input type="checkbox"/> |
| Other | <input type="checkbox"/> | |

Motion (Althaus; 2nd Matricardi): To grant a Special Permit to Sara Landis (by bldr/agt William Von Thaden), for property located at 80 Depot Rd. (Atlas Sheet 50, Parcel 19) for an addition and renovation to an existing dwelling on a pre-existing, non-conforming lot, as per plans filed with the ZBA, and drawn by Krueger Associates Inc., dated April 26, 2001 and revised 22 October 2003; said Special Permit is granted under Sec. VIII.B.1. of the Zoning Bylaw. The Board Conditions the Permit as follows: the Special Permit shall be granted conditionally on the issuance of the Order of Conditions from the Conservation Commission. The Board Finds said proposal conforms with setback and height requirements of the Truro Zoning Bylaws. The Board Finds said proposal is not more detrimental to the neighborhood, and is in keeping with the spirit and intent of the bylaw.

I hereby certify this as a true and accurate record of the Board of Appeals.

Signature Josh A. CohenDate 12/14/03

Received, Office of the Town Clerk

Signature Deborah AllenDate December 16, 2003

I hereby certify that this decision was filed with the Office of the Town Clerk on _____ and 20 (twenty) days have elapsed since the date of filing, and no appeal has been filed.

Signature _____

Date _____

NOTE: Any person aggrieved by a decision of the Zoning Board of Appeals may appeal to the Superior or Land Court by bringing action within twenty days after the decision has been filed with the Town Clerk of Truro. (Massachusetts General Laws, Chapter 40A, Section 17.)

EXHIBIT TWO

**TOWN OF TRURO
BUILDING DEPARTMENT
BOX 2030
TRURO, MA 02666**

Delivery Address
24 Town Hall Rd.,
Truro MA.

Phone: 508 349-7004 ext. 31
Fax: 508 349-5508

October 19, 2004

Law Offices of Paul Revere, III
226 River View Lane
Centerville, MA. 02632

Dear Mr. Revere,

I apologize for the delay of a response to your request for action.

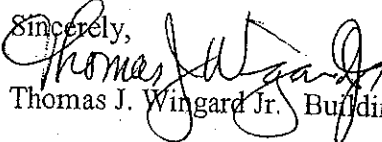
I'm acting on the facts, exhibit one of your July 26, 2004 letter (the building permit application) that you have presented to me.

I conclude that building permit, 98-186, issued on Brooke Newman's property by then Building Commissioner, Stephen Williams, was issued legally and lawfully according to section VIII-B 2) of the Town of Truro Zoning Bylaws:.

2. If the Building Commissioner determines and finds that the proposed repair, reconstruction, alteration, or structural change of a preexisting, nonconforming, single family or two-family residential structure will not be substantially more detrimental to its neighborhood than the existing nonconforming structure and will not increase the nature or extent of the nonconformity, then the Building Commissioner may approve and issue a building permit for the proposed repair, reconstruction, alteration, or structural change.

Mr. Williams determined, as is deduced by the issuance of the building permit, that Ms. Newmans' proposal was not "substantially more detrimental to its neighborhood" and "will not increase the nature or extent of the nonconformity."

Mr. Williams was acting within his authority under the bylaw and, therefore, the permit was issued lawfully.

Sincerely,

Thomas J. Wingard Jr. Building Commissioner Town of Truro

DECISION OF THE BOARD OF APPEALS OF TRURO, MASSACHUSETTS

Property Owner(s) and/or Applicant(s): Barbara Cordi-Allen, (by agt/atty Paul Revere, III)Property Location: 3 Yacht Club Rd.Atlas Sheet: 50 Parcel: 20 (Ref. 2004-014ZBA) Hearing Date: Monday, January 10, 2005 (as continued from the Meeting of Monday, December 6, 2004.)

| | | |
|--------------------------------|-------------------------------------|--|
| Special Permit | <input type="checkbox"/> | Vote: <u>5</u> Approve <input checked="" type="checkbox"/> |
| Variance | <input type="checkbox"/> | <u>0</u> Disapprove <input type="checkbox"/> |
| Building Commissioner Decision | <input type="checkbox"/> | <u> </u> Abstain <input type="checkbox"/> |
| Other | <input checked="" type="checkbox"/> | (Unanimous vote on Motion to Deny the application) |

Motion (Conlon; 2nd Pope): I hereby Move to Deny the application of Barbara Cordi-Allen, appealing the decision of the Building Commissioner dated October 19, 2004 upholding the issuance of a building permit on October 28, 1998 for property owned by Brooke Newman, Located at 3 Yacht Club Rd (Atlas Sheet 50, Parcel 20)[2004-014/ZBA], on the following grounds:

- 1) The Building Commissioner was fully authorized to issue the building permit to Ms. Newman pursuant to the provisions of Section VIII-B.2 of the former Truro Zoning Bylaws because Ms. Newman's project involved the alteration of a pre-existing, non-conforming structure and Section VIII-B.2 authorized the Building Inspector to approve and issue a building permit for a proposed repair, reconstruction, alteration or structural change of a pre-existing, non-conforming single-family structure if the Building Commissioner determines that the proposal will not be "substantially more detrimental to its neighborhood than the existing nonconforming structure and will not increase the nature or extent of the nonconformity;"
- 2) The appeal is untimely pursuant to the provisions of General Laws, Chapter 40A, Section 7 because the subject building permit was issued and the land improved over six (6) years ago, and therefore, the issue presently on appeal, namely whether the Building Commissioner acted within his authority on October 28, 1998, is now time-barred and moot.

I hereby certify this as a true and accurate record of the Board of Appeals.

Signature

Date

Received, Office of the Town Clerk:

Signature

Date

I hereby certify that this decision was filed with the Office of the Town Clerk on _____ and 20 (twenty) days have elapsed since the date of filing, and no appeal has been filed.

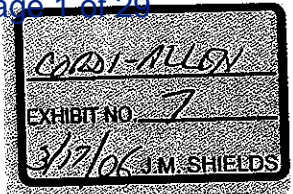
Signature

Date

NOTE: Any person aggrieved by a decision of the Zoning Board of Appeals may appeal to the Superior or Land Court by bringing action within twenty days after the decision has been filed with the Town Clerk of Truro. (Massachusetts General Laws, Chapter 40A, Section 17.)

A COPY OF THIS DECISION MUST BE FILED WITH THE REGISTER OF DEEDS
OF BARNSTABLE COUNTY BY THE APPLICANT

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS



CIVIL ACTION NO: 05-10370PBS

BARBARA CORDI-ALLEN AND
JOHN ALLEN,
Plaintiffs,

VS.

JOSEPH R. CONLON, ARTHUR F. HUTLIN,
NORMAN H. POPE, KEITH S. ALTHAUS,
And MARINNA MATRICARDI as they are
Members and collectively the TRURO
ZONING BOARD OF APPEALS AND THE
TOWN OF TRURO, MASSACHUSETTS,
AND BROOKE NEWMAN,
Defendants

PLAINTIFFS' ANSWERS TO DEFENDANTS' FIRST SET OF INTERROGATORIES

The Defendants, Joseph R. Conlon, Arthur F. Hutlin, Norman H. Pope, Keith S. Althaus, and Marinna Matricardi as they are Members and collectively the Truro Zoning Board of Appeals and the Town of Truro, Massachusetts (hereinafter "Defendants") directed interrogatories to the "Plaintiff," but did not specify whether they intended the interrogatories to be directed to Plaintiff Barbara Cordi-Allen or Plaintiff John Allen (collectively the "Allens"). Because the Allens own the property addressed in the complaint together and are husband and wife, these answers are submitted on behalf of both Barbara Cordi-Allen and John Allen.

INTERROGATORY NO. 1:

Please state the name, business address and occupation of each person whom you expect to call as an expert witness in the above-entitled matter, including as to each person the nature of his or her specialization, and, specifying separately as to each such expert, the following: the subject matter on which each expert is expected to testify, the substance of the facts to which each such expert is expected to testify; the substance of the opinions to which such expert is expected to testify; and a summary of the grounds for each such opinion.

RESPONSE TO INTERROGATORY NO. 1:

1. Peter Rosen, Ph.D., Geo-Plan Associates, 30 Mann Street, Hingham, Massachusetts 02043.

Dr. Rosen is a coastal geologist by education and training with over 30 years experience in coastal landform evolution and processes along the New England coast. He is a Professional Geologist licensed in the states of North Carolina, Virginia, and Florida and Associate Professor and Chairman of the Department of Earth and Environmental Science at Northeastern University. He has worked with engineers to evaluate, plan, and manage projects on the coast throughout New England, including erosion evaluations, sediment budgets, wetlands delineations, dune and bank construction and/or stabilization, and dredging and served for thirteen years on the Town of Hingham's Conservation Commission and has knowledge and an extensive background in the implementation of the Wetlands Protection Act ("WPA") and its regulations, location of septic systems in coastal areas under Title 5 of the State Environmental Code ("Title 5"), and permitting of coastal structures under M.G.L. ch. 91 ("Chapter 91").

Dr. Rosen will offer expert testimony on the permitting of various properties in Truro including properties in the area surrounding the Allens' property on Yacht Club Road under the WPA, Title 5, and Chapter 91, and will provide his opinion that the Town of Truro through its boards, commissions and agencies has applied different standards to the permitting of the Allens' property than it has applied to like situated properties. More particularly, Dr. Rosen will testify that the Truro Conservation Commission has permitted properties including those of the Pamet Harboe Yacht Club and defendant Brooke Newman to be developed without compliance with performance standards for "coastal dunes" under the WPA while at the same time insisting that the Allens' property which is part of the same geological formation is a coastal dune. Further that the Town of Truro through its various agencies opposed the Allens' proposal to reconstruct a pier and float on their property while at the same time promoting the permitting of a pier proposal by the Pamet Harbor Yacht Club which had similar navigation impacts. Further, even though the Town of Truro has taken the waterfront lands in front of the Yacht Club by eminent domain, Newman's and the Allens' property, the Town has allowed the Yacht Club to place floats and allowed Newman to maintain a moored boat in the taken property, but has steadfastly refused to allow the Allens to use any of the land including sufficient land to moor a boat to the existing pier. Dr. Rosen has prepared no report at this time.

2. Plaintiffs reserve the right to add additional expert witnesses and will seasonable supplement this response as necessary. In this regard, Plaintiffs intend to name an expert witness to testify as to damages suffered by the Plaintiffs.

INTERROGATORY NO. 2

Identify each individual likely to have discoverable information that you may use to support your claims, identifying the subject to of the information known by each such person.

RESPONSE TO INTERROGATORY NO. 2

1. Barbara Cordi-Allen, 143 Ardsley Road, Longmeadow, Massachusetts 01106. Ms. Cord-Allen is a Plaintiff in this matter and likely to have documents in her possession and knowledge regarding the permitting of her property and the Town of Truro's actions relating to it and like situated properties.
2. John Allen, 143 Ardsley Road, Longmeadow, Massachusetts 01106. Mr. Allen is a Plaintiff in this matter and likely to have documents in her possession and knowledge regarding the permitting of her property and the Town of Truro's actions relating to it and like situated properties..
3. Employees and Agents of the Town of Truro, Town Hall Road, Truro, Massachusetts. The Town of Truro is a defendant in this matter and listed below are individuals who the Plaintiffs believe have discoverable information. Notwithstanding, there may be other individual employees and agents of the Town who have information regarding the claims set forth in this complaint.
4. Joseph R. Conlon, Arthur F. Hultin, Norman H. Pope, Keith S. Althaus, and Marianna

Matricardi, Town Hall Road, Truro, Massachusetts. These individuals are members of the Truro Zoning Board of Appeals and may have information regarding the permitting of Plaintiffs' property and like situated properties.

5. Robert Bednarek, Secretary and other Members of the Truro Conservation Commission. The Conservation Commission and its members may have information regarding the permitting of Plaintiffs' property including both proposed home and pier, and information on the permitting of like situated properties.

6. Pamet Harbor Commission, Address Unknown. The current and past members of the Commission may have information on the concerted effort of the Town of Truro to prohibit the Plaintiffs from constructing a pier on their property, to silence complaints of the Harbormaster, to take the Plaintiffs' land below mean high water for use of others, and to allow the Pamet Harbor Yacht Club to use its land below mean high water even though it was taken by the Town of Truro..

7. Gary Palmer, Raymond LeDuc, Mark Peters, and Herbert Stranger, Jr., as they constituted the Board of Health for the Plaintiffs' request for a variance to construct a septic system to serve a proposed residence on their property.

8. R.W. Bud Breault, former town administrator, Town of Truro, Address Unknown, Mr. Breault may have information regarding the permitting of the Plaintiffs' property.

9. Vincent Corsano, Former Building Commissioner, Town of Truro, Address Unknown.

Mr. Corsano may have information regarding the permitting of similar properties in Truro.

10. Stephen Williams, Former Building Commissioner, Town of Truro, Address

Unknown. Mr. Williams may have information regarding the permitting of Defendant Brooke Newman's property and similar properties in Truro.

11. Thomas Winguard, Building Commissioner, Town of Truro, Town Hall, Truro,

Massachusetts. Mr. Winguard may have information regarding the permitting of like situated properties within the Town of Truro.

12. Brooke Newman, 3 Yacht Club Road, Truro, Massachusetts. Ms. Newman may have information regarding the construction and permitting of her house adjacent to Plaintiffs' property, her appeal of the Plaintiffs' permits, and how she obtained a permit without meeting the regulatory standards that the Town of Truro attempts to apply to Plaintiffs including construction and placement of fill in an area alleged to be a "coastal dune" by the Town and installation of a well without obtaining appropriate permits.

13. Sarah Turano-Flores and the law firm of Zisson and Veara, Main Street, Dennis,

Massachusetts. Ms. Turano-Flores and other lawyers including James Veara have provided legal advise to the Town of Truro and its various boards regarding the permitting of Plaintiffs' property.

14. Department of Environmental Protection's Southeast Regional Office including in

particular, James Mahala, Elizabeth Kouloheras, Ronald Potter, and Brian Dudley, 20 Riverside Drive, Lakeville, Massachusetts 02347. This agency and these individuals may have information explaining how they issued permits for the Plaintiffs' property on at least four different occasions concluding that the property does not contain a coastal dune under the Wetlands Protection Act and then, without explanation, reversed that position under pressure from the Town of Truro. In addition, they may have information on the Plaintiffs' permit application to construct a pier on their property.

15. New England District, U.S. Army Corps of Engineers, 696 Virginia Road, Concord, Massachusetts 01742. This agency and individuals within it may have information regarding the Plaintiffs' attempt to obtain a permit to construct a pier on their property.

16. Town of Truro Harbormaster's Office, Address Unknown, this office and Warren Roderick, now or formerly of that office may have information regarding the use of Pamet Harbor, the organized opposition by Town agencies to the Plaintiffs' development proposals, permitting of moorings and structures in the Pamet Harbor area, and the use of land taken by the Town from the Plaintiffs below mean high water for the mooring of boats owned by other individuals.

17. Pamet Harbor Yacht Club, P.O. Box 555, off Yacht Club Road, Truro, Massachusetts including its officers, directors and members. These individuals may have information explaining how the Yacht Club can construct additions, install wells, and serve food without obtaining permits from the Town of Truro, and as to the reason that a "marina" property with permitted piers, floats, and tennis courts and including more than three acres is valued at only slightly

higher than adjacent residential properties of smaller size and lesser buildings and accessory structures.

18. Town of Truro Assessors Department, Town Hall, Truro, Massachusetts. This department has information regarding the valuation of various properties near or similarly situated to the Plaintiffs.

19. Truro Board of Selectman (current and former members), Town Hall, Truro, Massachusetts. These individuals have had communications with the Plaintiffs over the years regarding the Plaintiffs' development proposals and the permitting of similarly situated properties.

20. Mr. David Lajoie, Felco Engineering, P.O. Box 1366, Orleans, Massachusetts 02653. Mr. LaJoie prepared the development plans for the Plaintiffs, their predecessors in title, and their neighbors.

21. Sarah Landis, 1 Yacht Club Road, Truro, Massachusetts. Ms. Landis owns property in the vicinity of the Plaintiffs and received permitting from the various agencies of Truro for her property.

22. Stanley Humphries, Coastal Scientist. Mr. Humphries is an expert witness for the Town of Truro in its challenge to the Department of Environmental Protection's issuance of an order of conditions for the Plaintiffs' pier and house.

23. Peter Rosen, Ph.D., 30 Mann Street, Hingham, Massachusetts. Dr. Rosen is the Plaintiffs' witness in the Town of Truro's challenge to the Department of Environmental Protection's issuance of an order of conditions for the Plaintiffs' pier and house.

24. Paul Kalill of Kalill, Glasser, and Senecal, 135 State Street, Springfield, Massachusetts 01103-1905, 413-781-1200. Mr. Kalill represented the Allens in their purchase of the subject property.

INTERROGATORY NO. 3

Please describe in detail all representations made to you by any and all individuals, including but not limited to any real estate broker, any employee or representative of the Town of Truro or by the prior property owner regarding the allowed use and/or expansion of the subject property prior to your purchasing the property. Please include in your answer, the specific representations made, the individual(s) who made the representations, when such representations were made and whether or not the representations were made in writing.

RESPONSE TO INTERROGATORY NO. 3

The subject property was purchased from Financial Enterprises Corporation ("FEC"). The Allens had no direct contact with FEC regarding the "allowed use and/or expansion of the subject property." All communications and representations were made by Nicholas Brown and Claire Carroll of Thomas D. Brown Associates, real estate brokerage, who represented FEC. More specifically, the Brown office represented in advertisements regarding the property as follows: "On the beach, waterfront boathouse renovated with loft bedroom, and addition possible for one

bedroom.” No statement was ever made to the Allens limiting this representation. The Brown office also provided pictures of the property showing it with the pier and floats approved under Chapter 91 license No. 4304. Except with respect to the bottom anchored floats as discussed in Interrogatory #4 below, no representations were made by any employee or representative of the Town of Truro to the Allens prior to the Allens’ purchase of the subject property.

INTERROGATORY NO. 4

Please describe in detail all due diligence that you performed prior to purchasing the property to determine the allowed use of the property and whether or not there were restrictions on the expansion of the structure located on the property and/or restrictions as to the construction of any new structure on the property.

RESPONSE TO INTERROGATORY NO. 4

The Allens hired attorney Paul Kalill of Kalill, Glasser, and Senecal, 135 State Street, Springfield, Massachusetts 01103-1905, 413-781-1200, to represent them in the transaction. Mr. Kalill obtained a title search of the subject property and concluded that it had no restrictions on it and that appropriate easements and government approvals had been obtained for the use of wells on nearby property to supply water and for the septic system.

The offer was made in late July, 1995, but the sale was not consummated until March, 1996. The septic system which was installed under a permit issued in January, 1994, was determined to not comply with Title 5 as the septic tank and pump chamber were not constructed from water tight

components nor had an appropriate pump assembly and electric service been installed. These components were replaced by FEC with the approval of the Town of Truro.

The Allens also obtained a copy of the Chapter 91 license #4304 for the subject property and through their engineer obtained a copy of a letter to FEC from the Department of Environmental Protection ("DEP"), dated July 28, 1995. This letter stated which stated that the pier could be reconstructed, but that any ramp and floats would require a DEP issued Chapter 91 license. Based upon an inquiry by the Allens, the DEP sent a clarifying letter which stated that only the replacement of the "pile-held floats" would require a Chapter 91 permit from DEP and that bottom anchored floats could be installed pursuant to "an annual Chapter 91, section 10A permit from the local Harbormaster. You will need to contact the Truro Harbormaster to see if the town will issue mooring permits for floats." Having received that advise, the Allens contacted the Truro harbormaster who informed them that the Pamet Harbor Yacht Club obtained annual permits for its floats and that the Allens should be able to obtain similar approvals. Ms. Cordi-Allen was particularly interested in purchasing a property which has a pier as she is disabled both from a bone condition and an elevator accident.

INTERROGATORY NO. 5

Please state in detail the basis for your claim that the Town of Truro discriminated against you due to your national origin including in your answer, which specific Town of Truro employee(s) or representative(s) discriminated against you, how those employee(s) or representative(s) were made aware of your national origin, any comments made by those employee(s) or representative(s) regarding your national origin and the basis for your claim that your national origin was a factor in the Town of Truro's decisions concerning the property.

RESPONSE TO INTERROGATORY NO. 5

The basis for Ms. Cordi-Allen's claim that the Town of Truro has discriminated against her is as follows. Ms. Cordi-Allen is a Lebanese American who is proud of her national origin and has made such ancestry known to many within the Truro community of which she has been a land owner for twenty years. The middle eastern states of Lebanon and Israel have had significant disputes over the last 30 years with the Israeli army occupying parts of Lebanon for years. Politics in Israel are dominated by members of the Jewish faith. It is Ms. Cordi-Allens contention that, within the Town of Truro, a significant if not controlling number of members of the Conservation Commission, Zoning Board of Appeals and town government are members of the Jewish religion and that they apply different standards for non-jews than for jews. In particular, as a Lebanese American, Ms. Cordi-Allen believes that she has been treated differently than like situated persons due to her Lebanese background.

More specifically, it is Ms. Cordi-Allens' contention that decisions regarding her property and

surrounding properties by Town boards follow a distinct pattern wherein members of the Jewish faith are allowed to build whereas she who is Lebanese is not. For example, Bernard Stoller, a member of the Jewish faith owned the subject property prior to Ms. Allen. In 1992, the Truro selectman approved a septic system for the current cottage by a decision dated December 11, 1992. The Truro Conservation Commission denied an order of conditions for the project on the basis that the property contained a "coastal dune." In May, 1993, the Southeast Regional Office of DEP, approved the site plan and delineations of wetlands in the plan submitted by FEC and explained the resource areas present at the subject property as follows:

The project proposes construction of a septic system and well supply line for an existing cottage. The nature and location of the present septic system is unknown. Review of the United States Geological Survey geologic map for the Wellfleet Quadrangle (1968) indicates that the sediments are predominately sand and gravel valley deposits. Based upon this information, the Flood Insurance Rate Map for the Town of Truro, **and observations made at the site, the Department has determined that the resource area in which the site is located is Land Subject to Coastal Storm Flowage (Zone A4, el. 12).** The Department has determined that the site is significant to the statutory interests of storm damage prevention and flood control.

Thus, the DEP specifically rejected the notion that the property contained a "coastal dune. No appeal was taken of this decision by the Truro Conservation Commission.

In March, 1996, the Allens purchased the Property from FEC (Barnstable County Registry of Deeds Book 1011, Page 256) and later filed a notice of intent under the WPA and a request for a variance from Title 5 to construct a house and septic system. In reviewing the application, the Truro Board of Health requested the opinion of Town Counsel who by letter dated September 27, 1996, informed the Board that it was free to consider the application without regard to the 1992 letter which the Town has argued restricts the Allens' property.

In April, 1997, the Allens revised their plan and again requested variances from the Truro Board of Health for a new three bedroom septic system on the property. The plan submitted by the Allens contained the same wetland resource areas (coastal bank and land subject to coastal storm flowage) in the same locations as the DEP approved in 1993. The proposed system replaced the current septic system with a system that incorporated the "FAST" technology that reduced nitrogen concentration in the effluent. Furthermore, the leaching field for the proposed system was located at the far western edge of the property more than 100 feet from the edge of the coastal bank. The location exceeded the state mandated 50 foot setback from the coastal bank by more than 50 feet, obviated the need for any variances from Truro's requirement to maintain 100 feet of separation between the leaching field and the shores of Pamet Harbor.

Notwithstanding, Truro belatedly attempted to deny the requested variances in 1997, and the Allens appealed to Superior Court. On April 15, 1999, the Superior Court ordered the variances granted. Truro did not appeal the judgment, but rather nearly immediately on May 13, 1999, sent a letter to DEP requesting that DEP disapprove any request to approve the variances. A month later, in June, 1999, the Allens applied for DEP approval of the variance to construct a system without a "reserve area." While a septic system in full compliance with Title 5, including a "reserve area" could be constructed on the Allens' property, they requested a variance from state Title 5 so that all of the components of the system would be located more than 100 feet from Pamet Harbor, to meet the requirements of the Town of Truro.

As this matter was proceeding, the Allens requested that the Board of Health take enforcement against the Pamet Harbor Yacht Club in 1998, as the club's septic needs were solely serviced by

cesspools. Rather, than make the Yacht Club upgrade their system, the Board quite interestingly found that cesspools, which are simply a pit into which sewage flows without treatment were perfectly appropriate for the adjacent Yacht Club while at the same time litigating with the Allens over the installation of compliant system that included a nitrogen removing treatment system.

Similarly in 1998, Defendant Brooke Newman, who is also of the Jewish faith, applied to the Conservation Commission for an order of conditions to move her house at 3 Yacht Club Road and to construct a septic system. The only order of conditions for the property was issued on May 22, 1998, and references a plan dated April 6, 1998, which was relatively rudimentary, although multiple changes were made to the plan after that date. In particular, a June 17, 1998, plan was prepared which included a new septic system consisting of a septic tank, pump chamber, and leach area which was approved on August 2, 1998, by the Conservation Commission. Newman's plan was again revised on August 25, 1998 and apparently approved by the Commission. Finally, the Commission approved further revisions dated February 1999, at its March, 1999, meeting. While each of these plans shows construction adjacent to the subject property and wetland resources on the subject property, not a single version of the plan shows a "coastal dune" on the subject property. While this would make some sense with respect to the subject property as DEP had already concluded that it contained only a "coastal bank", the Truro Conservation Commission was simultaneously taking the position that the subject property contained a "coastal dune" when examining proposals for it by the Allens and the construction activities were within 100 feet of the alleged "coastal dune" making the Newman property subject to Commission jurisdiction and WPA performance standards for a "coastal dune."

The on the Newman property was not even completed in compliance with the plans approved by the Commission regardless of the "coastal dune" issue as: (i) the foundation did not have breakaway panels; (ii) fill was brought on to the property to at least elevation 13.5 to cover the outlet to the septic tank from the home; (iii) large rocks were brought onto the property which were not shown on any plan; (iv) a fence was constructed; (v) an overhanging roof was constructed; and (vi) while Newman had informed the Conservation Commission that she would only plant "native grasses", Ms. Newman planted numerous trees and shrubbery.

In May, 2004, the Allens requested that the Conservation Commission initiate enforcement against Brooke Newman for failure to comply with the terms of her order of conditions and failing to comply with "coastal dune" performance standards which the Commission and Ms. Newman wish to have applied to the adjacent Allen Property. The Commission, however, simply ignored these issues and concluded that Newman had constructed in accordance with the approved plan. This was done notwithstanding that the Commission was opposing any placement of fill or planting on the subject property and, in direct contradiction of the Commission's approval of the February 1999 Plan that stated:

The proposed change to the plans and work **does not affect the contour of the land around the house** or the leach field. (emphasis supplied).

Recognizing the Conservation Commission and Board of Health acted nearly immediately on any application of Ms. Newman, but such boards simply failed to act when the Allens submitted applications, the Allens requested that the DEP issue Superseding Orders of Conditions for the Allens proposed house, septic system, and pier in November, 1998. The Southeast Regional

Office of DEP accepted the Allens request to consider the issuance of a Superseding Order of Conditions in January, 1999. The plan submitted by the Allens to DEP contained the same wetland resource areas (coastal bank and land subject to coastal storm flowage) in the same locations as were found by DEP in 1993 when it rejected a contention by the Truro Conservation Commission that the Property contained a "coastal dune." These were the same delineations submitted by Ms. Newman.

An on-site meeting was held by DEP in early, 1999 to evaluate the Allens project in 1999. At the on-site meeting, DEP and members of the Truro Conservation Commission observed individuals excavating and repairing the septic system for the adjacent Pamet Harbor Yacht Club. No permits were obtained for such work, but no enforcement action was initiated against the Yacht Club. Furthermore, the members of the Truro Conservation Commission in attendance argued that the subject property contained a "coastal dune" while, at their recent meeting, they had approved Ms. Newman's revised plan which showed the subject property without a "coastal dune."

On January 18, 2000, DEP issued a variance from 310 C.M.R. 15.248: Reserve Area to the Allens (the "DEP Variance"). The DEP Variance approved the use of nitrogen removing FAST system and further expressly noted that a system without a variance could be constructed, but that it benefitted the environment to grant the variance as it ensured a maximum separation from the Pamet Harbor. Truro did not appeal the DEP Variance.

On June 8, 2000, by letter from Elizabeth Kouloheras, the Southeast Regional Office of DEP

issued two superseding orders of conditions authorizing the Allens' house, septic system and pier. The DEP concluded that the Property did not contain a "coastal dune" and authorized the construction of septic system on it. In June, 2000, the Town of Truro and the Pamet Harbor Yacht Club requested an adjudicatory hearing on the two Superseding Order of Conditions issued by DEP alleging that the Allens' property contains a "coastal dune." In November, 2000, a prehearing conference was scheduled for the appeals of the superseding orders of conditions, and Ms. Newman filed a motion to intervene in the proceeding which was ultimately granted and alleged that there existed a "coastal dune" on both the Property and her adjacent property. The allegation was somewhat perplexing as Ms. Newman never showed a coastal dune on any of her filings with the Truro Conservation nor does the development of her property comply with the performance standards for "coastal dunes"

In February, 2001, Truro's Health Agent attempted to create an appeal right for the Town on the DEP Variance by writing a letter to the Allens' attorney stating that the order of conditions and the DEP Variance referenced different plans and that the DEP Variance needed to be modified for the Town to issue a septic system construction permit. The Allens' attorney then requested that the DEP Variance be modified to reflect the new plan. A review of the plan reveals that there is a single change to the septic system in that piping from a portion of the building to the septic tank has been moved a few feet to the east.

Truro and Brooke Newman then filed Superior Court actions (Barnstable County No. 01-347, Suffolk County No. 01-2419F) challenging the Amended DEP Variance.

In March, 2001, Sarah Landis, a person of the Jewish Faith, applied to the Truro Conservation Commission for an order of conditions under the WPA to expand her house which is located adjacent to the Newman and Allens' properties. The expansion increase the footprint of the home to in excess of 2,500 square feet. On May 25, 2001, the Truro Conservation Commission issued an order of conditions authorizing construction. Even though the Conservation Commission was vigorously arguing that the Allens' property was "coastal dune", the Commission approved Ms. Landis' expansion as simply being in the flood plain.

The Allens also applied to the DEP for a Chapter 91 license to maintain and extend a pier at the Property in 1996. The notice of the application was published in November, 1996, and letters were sent by the Town administrator and the Harbormaster of Pamet Harbor requesting that the M.G.L. ch. 91 license be denied and/or that a public hearing be held. Within a month, the harbormaster "blew the whistle" on Chairman of the Pamet Harbor Commission who was also a member of the Pamet Harbor Yacht Club alleging that : (i) the Chairman pressured the Town Administrator to write the letter after the harbormaster originally refused to do so; and (ii) the harbormaster signed a similar letter in "a moment of weakness" when he believed that he would not obtain a raise if he refused to write a letter in opposition. When these allegations were revealed, the Town of Truro selectman refused to accept the resignations of Pamet Harbor Commission members and went so far as to criticize the harbormaster for his actions.

From 1996 to this time period, numerous meetings were held with DEP and the U.S. Army Corps of Engineers regarding the M.G.L. ch. 91 license application and a related permit application for the Allens' proposed pier extension. At these meetings, DEP informed the Army Corps that it

intended to issue the M.G.L. ch. 91 permit to the Allens. Notwithstanding these statements, the DEP issued a notice of denial of the M.G.L. ch. 91 license to the Allens on November 30, 2000, for which the Allens requested an adjudicatory hearing before DEP.

In October, 2001, the Allens wrote to the Truro Harbormaster with a copy to Town Counsel, which complained that boats were being moored on town authorized moorings on the Allens tidal flats (*i.e.*, land owned by the Allens between mean high and mean low water). In late January, 2002, the Allens learned that the Town of Truro intended to take the tidal flats on their property and adjacent land owners by eminent domain. The purpose of this action was to prevent the Allens from constructing their proposed pier and to eliminate their complaints regarding the Town using the flats for moorings and was done to benefit the Pamet Harbor Yacht Club and other users of Pamet Harbor to the exclusion of the Allens. The Order of Taking was recorded in the Barnstable Registry of Deeds on February 15, 2002.

The Allens were offered a payment of \$2,500 for the land which was the lowest of any property owners and approximately ten percent of the amounts paid to their residential neighbors including Ms. Newman. The purported reason for the lesser payment was that the Allens retained an easement in the location of an existing dilapidated pier which only reaches the water during less than one quarter of the tidal cycle and serves no purpose other than as a viewing platform.

As an alternative, the Allens applied for a permit to extend anchored floats from the existing pier in 1996. That request was tentatively approved by the Harbormaster so long as the Allens paid a \$2100 annual fee. The Allens objected to this fee as the neighboring Pamet Harbor Yacht Club

was required to only pay a \$300 annual fee for similar floats.

In this regard, the Truro Harbormaster has attempted to prevent the Allens and their guests from tying any boat to the pier. In July, 2004, the Allens again requested authority to install floats off of the "viewing platform." Town counsel nearly immediately responded that such licenses would not be issued as the Town now owned the tidelands in which they would be located. However, the Town of Truro has licensed for at least two years floats of the Pamet Harbor Yacht Club which extend beyond their easement. Similarly, Ms. Newman has been allowed to maintain an unpermitted mooring in front of her property which cause her boat to rest on land taken from the Allens.

In October, 1997, the Town Administrator issued a memorandum to all town boards warning the Boards to be cautious in dealing with the Allens. The letter stated that he would not speak with the Allens without witnesses present and stated that the Boards should act similarly. The letter also directed the Boards and Commissions in contravention to public records laws to not release information to the Allens or their attorneys and required that any request from the Allens for documents be handled by the Town's attorneys.

On or about October 28, 1998, the Building Department of the Town of Truro issued a building permit for construction on Brooke Newman's property at 3 Yacht Club Road without requiring Ms. Newman to obtain a special permit or a variance.

In April and May of 2002, Town Counsel in the Town's continuing assault on the Allens wrote to

the Allens attorney and stated that the Allens required a variance from the zoning bylaw to expand their home or, at a minimum, a special permit, even though their neighbor, Brooke Newman, had not been required to do so for her expansions.

By letter dated July 26, 2004, Barbara Cordi-Allen requested that the Building Commissioner revoke the building permit issued to Brooke Newman as she had not obtained a special permit or variance. The request cited letters to the Allens' counsel from town counsel stating that the Allens required a variance or special permit and that Sarah Landis had applied apply for a special permit. The Building Commissioner failed to respond within the statutorily required 14 day period.

Finally, after numerous telephone calls to town counsel, the Building Commissioner issued a letter on October 19, 2004, denying the request and essentially stating that his predecessor must have found that a special permit or variance was not required. On October 27, 2004, Barbara Cordi-Allen filed an appeal of that decision with the Truro Zoning Board of Appeals and filed a notice with the Barnstable County Registry of Deeds on the following day. Even though the Building Commissioner waited nearly three months to respond instead of the 14 days required by statute, town counsel quickly informed the Truro Zoning Board of Appeals that the appeal was untimely because the appeal had not been filed in Superior Court by October 28, 2004, citing a case that does not even address the issue of whether a timely filed administrative proceeding may continue.

The Truro Zoning Board of Appeals held a public hearing in December, 2004, and again on January 10, 2005. On January 19, 2005, a decision was filed with the Truro Town Clerk denying

Ms. Cordi-Allen's appeal. The decision simply holds without findings that the Building Commissioner acted properly in issuing the building permit and that the appeal was untimely.

In May, 2005, the Allens requested that the Town take action against the Pamet Harbor Yacht Club for renting out the Yacht Club to non-members for private functions including weddings. Notwithstanding that the Yacht Club property is residentially zoned and such parties have not been held during previous years, the Town simply refuses to take any action to prevent this violation of its zoning bylaw.

In July, 2005, the Allens requested that the Truro Board of Health and Conservation Commission take enforcement action against Newman for installing a well and water line within the flood plain and on adjacent property for which the Commission and Board of Health took no action. Further, in that same month, the Allens requested that the Board of Health and Building Department take enforcement action within their respective authorities as the Pamet Harbor Yacht Club was being rented regularly as a wedding hall even though it had no public water supply. Again, no action was taken.

Finally, the Board of Health of the Town has taken the position that certain "hallways" in the Allens' proposed residence are actually bedrooms for purposes of Title 5 and local regulations. However, the Town does not require Ms. Newman to consider her "Music Alcove" as a "bedroom" even though it is functionally closer to a bedroom.

It is Ms. Cordi-Allens' position that these actions were discriminatory and were taken in part due

to her Lebanese and/or non-Jewish ancestry.

INTERROGATORY NO. 6:

Please specify with particularity any and all damages which you claim to have suffered as a result of the acts and/or omissions of the Defendants, and provide an itemized description of such damages.

RESPONSE INTERROGATORY NO. 6

The damages of the Plaintiffs consist of many kinds. For over nine years, the Town has acted to prevent the Plaintiffs from fully utilizing their property in a manner authorized by law. Thus, the Plaintiffs have lost the use and enjoyment of their proposed home which can be measured by the fair rental value of their property over that period. A waterfront home of the size proposed by the Plaintiffs with a pier in an exclusive area of Cape Cod rents for approximately \$10,000 per week during the summer (\$80,000/year) and approximately 2/3 of that amount during the months of June and September (\$56,000/year). In addition, the house would have significant value to the Plaintiffs in the other months and certainly in excess of \$50,000 more annually for a value of \$186,000 per year. For purposes of this disclosure, the Plaintiffs have assumed seven years of use which corresponds to a value of about \$1.4 million.

The costs of construction have substantially increased over this period and the Plaintiffs estimate that their costs will be at least 50 percent higher than nine years ago and, in the range of \$300,000 greater. The Plaintiffs expect that any construction will be financed and, with higher interest rates,

the actual costs to the Allens will be doubled to at least \$600,000.

The Plaintiffs have also been required to incur approximately \$300,000 in unnecessary legal and consultant fees to defend the Town and Newman's appeals.

Furthermore, the Allens have suffered damages to reputation and emotional distress due to over nine years of fighting with the Town to obtain permits. This distress has caused physical and mental injury to the Plaintiffs which they value at \$1.7 million dollars.

The Allens have also lost the use and enjoyment of the pier and float system and the land under mean high water. This can be valued on the basis of the fair rental value of a slip at a marina which in the lower-Cape area would be extremely high due to the lack of available slips and in excess of \$10,000 per year per slip. Given that the pier and float system would have at least two slips, the damages are \$20,000 per year over nine years or approximately \$180,000.

Finally, they expect that, when a fact finder learns the full history of the Plaintiffs' permitting travails, the fact finder will award punitive damages of at least three times the underlying claim.

INTERROGATORY NO. 7:

Please state the basis for the allegation contained in paragraph 16 of your complaint that the "harbormaster blew the whistle on the Chairman of the Pamet Harbor Commission who was also a member of the Pamet Harbor Yacht Club alleging (1) that the Chairman pressured the Town Administrator to write the letter after the harbormaster originally refused to do so; and (2) the harbormaster signed a similar letter in a 'moment of weakness' when he believed that he would not obtain a raise if he refused to write a letter in opposition", including in your answer any documentation evidencing your allegation as well as any and all conversations between you and any employee or representative of the Town of Truro regarding this allegation.

RESPONSE TO INTERROGATORY NO. 7

The allegations in this paragraph are based upon statements reported in the Cape Codder Newspaper of January 24, 1997, and related articles on January 27, 1997, which have been provided in response to the Defendants' document request.

INTERROGATORY NO. 8:

Please state the basis for your allegation contained in paragraph 99 of your Complaint that, “the Town of Truro intentionally discriminated against you with the intention of protecting the interest of the Pamet Harbor Yacht Club and its members who include many of the most influential citizens of Truro” including in your answer, the specific facts you claim evidence the Town of Truro’s intentional discrimination, any and all conversations or comments you had or overheard evidencing such discrimination, any and all actions taken by the Town of Truro that you claim evidence the intentional discrimination as well as the identity of the “influential citizens” referenced in this paragraph along with any actions taken by those citizens to influence the Town of Truro’s actions concerning your property.

RESPONSE TO INTERROGATORY NO.8

See Response to Interrogatories 6 and 7.

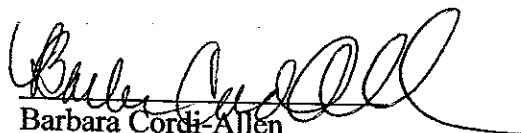
INTERROGATORY NO. 9:

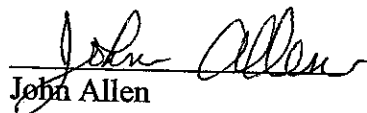
Please describe in detail any and all actions taken by the Town of Truro and its employees and/or representatives that you allege amount to threats, intimidation and coercion in violation of your equal protection and due process rights, including in your answer the specific action taken, and the individual Town of Truro employee or representative who took the action alleged.

RESPONSE TO INTERROGATORY NO. 9

As explained in detail in the response to Interrogatory No. 6, the members of various boards and commissions have used their position of authority to coerce the Plaintiffs to no longer exercise their constitutionally protected right to develop the subject property to the extent allowed by law. The Town through the individuals on its Board of Health and Conservation Commission has applied wholly arbitrary and capricious standards for compliance with applicable laws between the Plaintiffs and like situated land owners on adjacent properties. This has been done to prevent the Allens from lawfully using their property and is being done, not for environmental protection purposes, but rather to limit the Allens' use of their property for the benefit of others. As part of the scheme of coercion, every permit issued to the Allens has been appealed, except for one variance for which the Health agent then concocted a scheme to create an appeal opportunity. Further, the scheme has been implemented by the taking of the Allens' tidelands to prevent development of a pier from their property. The natural and expected effect of these action would be that the Allens would not develop their property.

Signed under pains and penalties of perjury this __ day of February, 2006.


Barbara Cordi-Allen


John Allen

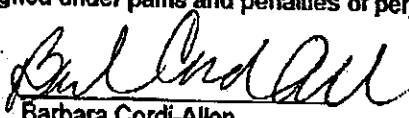
INTERROGATORY NO. 9:

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Signed under pains and penalties of perjury this ^{9th} day of February, 2006.


Barbara Cordi-Allen


John Allen

Original Signature to Follow
By Mail

RAILROAD
MER.

PAMET

HARBOR

TOWN OF TRURO

RIGHT
OF
WAY

JOHN C. WORTHINGTON

DEPOT ROAD TOWN WAY
UNDEFINED

GERALD L.
CADORETTE

PAMET YACHT CLUB, INC.

AREA = .332 ACRES

AREA = .387 ACRES

AREA = .581 ACRES

TURN
R = 30.00'

WAY
160.00'

APPROVED:
[Signature]
[Signature]
[Signature]
FOR THE TRURO PLANNING BOARD
DATE: Sept 28, 1972

SUBDIVISION PLAN OF LAND IN TRURO
MADE FOR
JOHN C. WORTHINGTON
SCALE: 1" = 40 FT.
W. E. SLADE,
TRURO, AND MAIN STREET, WELFLEET, MASSACHUSETTS
AUGUST, 1972
SURVEYOR
02667



I, Thomas A. Kane, Clerk of the Town of Truro, hereby certify that the notice of approval on this plan by the Truro Planning Board has been received and recorded at this office and no appeal was received during the twenty days after such receipt and recording of said notice.
Date: Oct 27/72 *[Signature]*
Town Clerk



81-498

Plan Book 264 Page 18

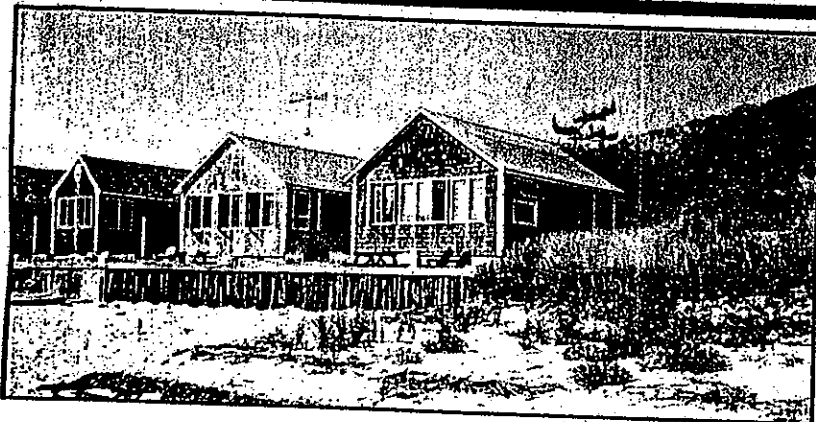
THOMAS D. BROWN
ASSOCIATES REAL ESTATE

Route 6
Truro, MA 02666



(508) 349-2734

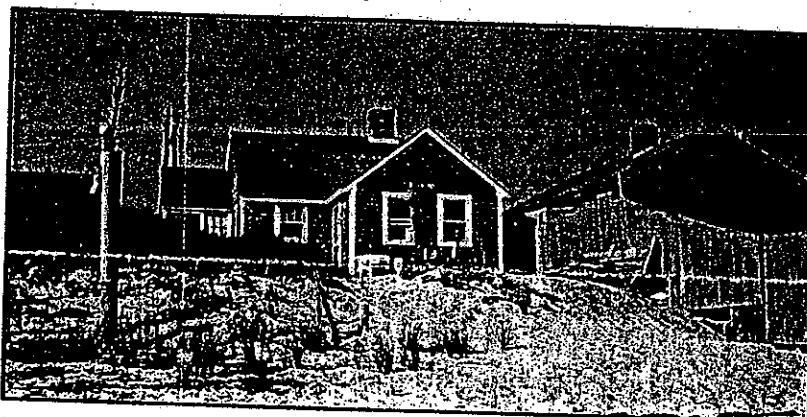
SERVING THE OUTER CAPE FOR THIRTY YEARS



ON THE BEACH,
affordable Truro cottage condo,
at Pilgrim Beach Village, One
bedroom seasonal use, the per-
fect get a way! A Brown Assoc.
Best Buy at \$95,000.

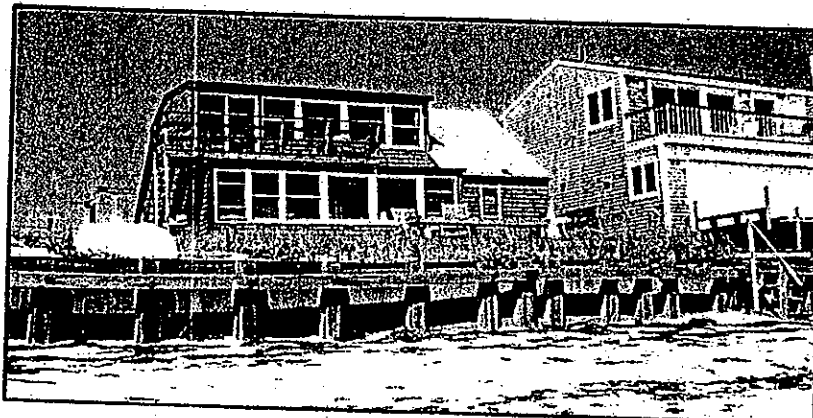


ON THE BEACH,
affordable 2 bedroom cottage on
the bay, the beach is your front
yard, can be used for the extend-
ed season! A Brown Assoc. Best
Buy at \$195,000.



ON THE BEACH,
waterfront boathouse renovated
with loft bedroom, existing dock,
and addition possible for one
bedroom. A Brown Assoc. Best
Buy at \$195,000.

ON THE BEACH,
waterfront Cape Codder cottage,
in A plus location, with two bed-
rooms, and master suite on sec-
ond level. A Brown Assoc. Best
Buy at \$265,000.



BOARD OF SELECTMEN & ASSESSORS

P.O. Box U
Truro, Massachusetts 02666
(508) 349-3635

December 11, 1992

Mr. David B. Lajoie
Felco, Incorporated
P. O. Box 1366
Orleans, Massachusetts 02653

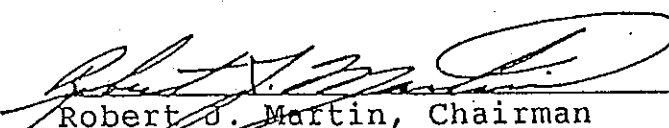
Re: Financial Enterprises Corp., Lot C, Sheet 50, Parcel 21

Dear Mr. Lajoie:

Please be advised that your request of three (3) waivers of Title V regulations reference the above captioned matter, is hereby approved with the following conditions:

1. Regardless of the capabilities of the Title V system, the dwelling will be restricted to a one (1) bedroom residence.
2. That a Certificate of Occupancy will not be issued until such time as this office is in receipt of a copy of the recorded easement for water supply.

Sincerely,


Robert J. Martin, Chairman


Bruce T. Tarvers


John H. Snow

Board of Health
Town of Truro
RJM/can

cc: Steve Williams, Health Agent
Conservation Commission

**TOWN OF TRURO
BOARD OF HEALTH MINUTES
WEDNESDAY, JUNE 4, 1997**

The Truro Board of Health conducted a duly posted meeting on Wednesday, June 4, 1997 at 6:30 p.m., at the Town Hall Annex, 19 Town Hall Road, Truro. Present: Chairman Gary Palmer, Vice Chairman Maria Kuliopulos, Clerk Mark N. Peters (arrived late), Alternate Samuel Armstrong, Attorney Jay Murphy, Mrs. Alice Onbashian, Richard Bashian, Representing Mr. and Mrs. Allen were Attorney William Thomas, Stenographer Diane L. Kelly, and David Lajoie. Also present were Diana Worthington, Robert Spillane representing the Pamet Harbor Yacht Club, Claire Carroll, and Michael McGuire.

Motion to approve the minutes of May 14, 1997 by Maria Kuliopulos, second by Gary Palmer. 2-0, unanimous.

First hearing was for approval of a Condominium Conversion for Coral Sands, Inc. Chairman Palmer explained that Mr. Bashian had met with Health Agent Jane Crowley, who had approved the plan for the Condo Conversion purposes only. The Title V system was approved for an 18-bedroom ten-unit design. Said system must be installed prior to construction. Additionally the parking plan is for (20) cars. Mrs. Kuliopulos moved to approve and Mr. Armstrong gave the motion a second with the understanding that proponents must return to the Board of Health for final review of physical change of use.

Next a Public Hearing was held on a request by Felco Engineering representing Barbara and John Allen, 5 Yacht Club Road, Sheet 50, Parcel 21, Truro, for five waivers from the requirements of Title V to permit the construction of a 4-bedroom home. The proposed system was a slight modification of one presented to the Board in October 1996. At that time the request was denied on the grounds that a condition was imposed in December, 1992, when the previous owner, Financial Enterprises, Corp. was granted three waivers for the installation of a Title V system by the Board of Health. The relevant condition states: **"Regardless of the capabilities of the Title V system the dwelling will be restricted to a one bedroom residence."**

Attorney Thomas noted that (1.) that none of the requested waivers were specifically "undeniable" ones, and that (2.) at the time there was no requirement that a conditioned variance be recorded at the Registry of Deeds.

The waiver requests were reviewed and the meeting was opened to additional comments from the floor. Mr. Spillane, Commodore of the Yacht Club, noted that there is a Title V system adequate for the existing building. He also pointed out that at the October 1996 Board of Health meeting, Nick Brown, representing the Thomas Brown Agency, had told the Board that the Allen's were informed by his real estate office that the condition existed. Mr. Spillane also stated that a large two-story building would do great esthetic harm to the area. Diana Worthington, an abutter, concurred in that opinion. Mr. Peters said that the Board cannot take matters such as

Board of Health Minutes
Wednesday, June 4, 1997
Page 2

esthetics into account when reviewing health issues. Claire Carroll, who was present on another matter, but who had represented the Brown agency in the sale to the Allen's said that not only had the Allen's been informed of the limiting condition, but that she had given them a copy of the Board of Health order. The Chairman stated that whether the Allens had been informed of the condition at the time of purchase or not, this was an issue between the seller and the Allens and not an issue for the Board of Health. "The condition exists and the condition is valid," he said. Mr. Peters moved to take the matter under advisement. Mrs. Kuliopulos gave the motion a second. 3-0, unanimous.

The next item on the agenda was a continuance of a hearing involving a waiver of three months for Salley and Susan Areson pending determination as to whether the property in question represented a new division of property in a cottage colony or was an existing free standing lot. A quitclaim deed indicated that the land was an existent lot and Mr. Peters so moved to grant a 3-month waiver on the Title V installation. Mrs. Kuliopulos gave a second, 3-0, unanimous.

Next the Board conducted a Public Hearing on a Change of Manager for the Braemar Condominiums, 132 Shore Road, N. T. All documentation being in order and the hearing duly advertised, Mrs. Kuliopulos moved to approve the change from Howard Wagner to Carrie S. Stephens and Junie Maslowski. Mr. Peters gave a second, 3-0, unanimous.

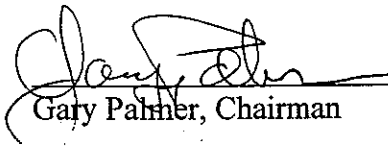
The Board then reviewed a request from David Johnson for a water service hookup for the family dwelling located at 30 Shore Road, N. T. Mrs. Kuliopulos moved to recommend approval. Mr. Peters gave a second, 3-0, unanimous.

Finally the Board acted on a request from Michael McGuire to expand his property at 10 South Hollow Road, in N. Truro. The situation is unique in that Mr. McGuire's septic is part of a three-cesspool system installed and maintained by the Town of Provincetown. An abutter attached to the same system had undertaken a similar expansion in 1987 and a Board of Health waiver was granted in May of that year.

The current Board had asked to meet with Provincetown representatives but no meeting is possible until late fall of 1997. That being the case, and given the circumstance that there would be no additional usage of the property, and that a delay would cause an undue hardship for Mr. McGuire, Mr. Peters moved to grant a waiver from the need to install a Title V. Mrs. Kuliopulos gave a second, 3-0, unanimous.

Board of Health Minutes
Wednesday, June 4, 1997
Page 3

At 7:45 p.m., there being no further business, Mr. Peters moved to adjourn with Mrs. Kuliopulos giving a second. 3-0, unanimous.



Gary Palmer, Chairman



Maria Kuliopulos, Vice Chairman



Mark N. Peters, Clerk

Board of Health
Town of Truro

/sa/gp

AFFIDAVIT

June 11, 1997

I, NICHOLAS L. BROWN, am President of Pamet Valley Real Estate Corporation d/b/a Thomas D. Brown Real Estate Associates, and have been in that position since February 1994.

On June 26, 1995 JOHN E. ALLEN and BARBARA M. ALLEN made an offer of \$150,000 to purchase the land and cottage consisting of .561 acres more or less, and further known as 5 Yacht Club Road, Truro, Massachusetts.

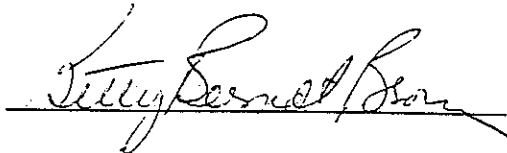
Mrs. Claire Carroll of this office handled the showing and subsequent preparation of the "Offer to Purchase Real Estate".

In my presence Barbara M. Allen was told, and given a copy of, a letter dated December 11, 1992 from the Board of Selectmen to the then engineer, Mr. David Lajoie. This letter was signed by the Town of Truro Selectmen and stipulated that the property would always remain a one-bedroom dwelling. A copy of this letter is attached.

Further, in our advertising and representations to all potential buyers, we pointedly expressed one belief that some "footprint" expansion could occur, but only as a one-bedroom dwelling. For example, a master bedroom suite might be added, but the dwelling would only be a one-bedroom structure.

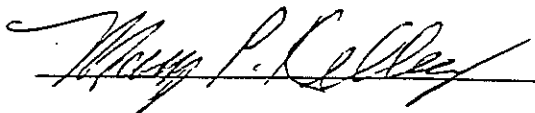
Witness:

Sworn to this date,


Betty Bernadine Brown


Nicholas L. Brown

Sworn to in my presence, this 11 day of June, 1997


Mary P. Kelly

MR. JOHN E. ALLEN
MRS. BARBARA M. CORDI-ALLEN
146 PLEASANTVIEW AVE.
LONGMEADOW, MA 01106

TOWN MANAGER
TRURO TOWN HALL
TRURO, MA

DEAR SIR:

WE ARE WRITING YOU THIS LETTER REGARDING THE MEETING HELD WITH THE BOARD OF HEALTH REGARDING THE ORDER OF INTENT OF OUR BUILDING ON OUR PROPERTY AT 5 YACHT CLUB RD. THE MEETING WAS HELD AT 6:30 WEDNESDAY, OCTOBER 16, 1996. YOU HAD SAID THAT YOU WOULD BE AT THAT MEETING, BUT YOU NEVER CAME.

WE REQUESTED FROM YOU THE COPY OF THE LETTER FROM YOUR TOWN COUNSEL REGARDING A LETTER OF RESTRICTION OF OUR PROPERTY BEING A ONE BEDROOM. YOU STILL HAVE NOT SENT US THIS LETTER. WE WANTED IT PRIOR TO OUR HEARING WITH THE BOARD OF HEALTH. WE ARE REQUESTING IT AGAIN, AND ANY CORRESPONDENCE REGARDING US IN THE FUTURE. AFTER SPEAKING WITH YOU OVER THE PAST FEW MONTHS, YOU EVEN BROUGHT TO OUR ATTENTION THAT IF A SOMETHING IS NOT ON THE DEED THEN IT DOESN'T EXIST.

DUE TO THE POLITICS THAT OCCUR IN TRURO, ANYTHING CAN PASS HANDS WITHOUT LEGALITIES. IN THE TITLE SEARCH OF OUR PROPERTY AND ON THE DEED, THERE ARE NO RESTRICTIONS. NOT ONLY ARE THERE NO RESTRICTIONS, BUT THERE IS NO ZONING FOR A 1 BEDROOM. WE DO HAVE THE ZONING BYLAWS. CONCERN CAME OF THE DEVELOPMENT OF THE HARBOR. DISCRIMINATION OCCURRED WHEN THE ZAWADUCK'S WERE ALLOWED TO BUILD THEIR 4 BEDROOM HOME IN THE HARBOR AREA. NEXT DOOR TO US IS THE YACHT CLUB WHICH ENTERTAINS HUNDREDS OF PEOPLE AT A TIME AND IS A HUGE BUILDING. THE YACHT CLUB WAS CONCERNED ABOUT BACTERIA IN THE HARBOR. ISN'T IT FUNNY THAT A FAMILY OF FOUR WOULD USE THE TITLE V SEPTIC SYSTEM AND RISK THE BACTERIA OF THE HARBOR, YET THE YACHT CLUB, WHO DOESN'T HAVE A TITLE V NOR DO OUR ABUTTERS, WOULDN'T. ALSO, THE FACT THE OUR ABUTTERS HAVE MORE BEDROOMS THAN WE DO (WE DON'T HAVE ANY) IS ALSO DISCRIMINATORY. THE "BOATHOUSE" WAS FOR SALE FOR 5 YEARS AND ANYBODY COULD HAVE PURCHASED IT IF THEY SO DESIRED. NOW, IT SEEMS THAT PEOPLE ARE CRYING OVER SPILLED MILK.

IF BACTERIA IS SUCH A CONCERN, PERHAPS YOU SHOULD BE CONCERNED OF THE SANITARY CASTLES SPILLING OVER DURING THE HURRICANE. WE WARNED YOU OF THE DANGEROUS SITUATION, BUT YOU TOOK NO STEPS TO PREVENT THIS FROM OCCURING. ALSO, WHEN THE DEP PASSES A SEPTIC SYSTEM, THE STATE'S STANDARDS AND TESTING ARE BEHIND IT. WE FIND IT CONFLICTING FOR THE BOARD OF HEALTH NOT TO APPROVE THE STATE RECOMMENDED PLAN. AS BARBARA PUBLICLY ANNOUNCED AT THE MEETING, IF BACTERIA WAS A CONCERN, THEN WHY DID THE BOARD OF HEALTH PASS A SYSTEM THAT HAD NO PUMP, NO ALARM, AND NO ELECTRICITY? AGAIN, THE POLITICS OF TRURO.

WHILE WE ARE TALKING SEPTIC SYSTEMS, OURS IS A TITLE V AND IS UP TO DATE. IF THERE WERE FLOODING, THE DEP WOULD NOT HAVE ALLOWED THE PRESENT SYSTEM IN PLACE. YET, THE YACHT CLUB AND THE COTTAGES BEHIND US ARE NOT TITLE V SYSTEMS AND DEFINATELY ARE A RISK!! WE BROUGHT UP THE HOUSE BUILT IN THE WETLANDS ON CASTLE ROAD. IF WE FLOOD SO DO THEY. THEY WEREN'T STOPPED FROM BUILDING, WERE THEY?

NOW, REGARDING THE HORSE FARM ON DEPOT ROAD. WHEN THAT FLOODED, WHERE

DID THE HORSE MANURE GO? LET'S TALK BACTERIA!! IT IS OBVIOUS THAT WE ARE BEING GIVEN THE RUN AROUND, THE SAME RUN AROUND REGARDING OUR DOCK. THE STATE POLICE HAVE CONTACTED TRURO OFFICES ABOUT THE SAME GAMES BEING PLAYED NOW.

IT IS NOT THE BOARD OF HEALTH'S RESPONSIBILITY TO DISCUSS INTERNAL LETTERS SENT AND NEVER RECORDED ON ONE'S DEED. THERE IS A LAW, THERE ARE PROCEDURES AND A DEED IS BINDING. HOPEFULLY YOU WILL STRAIGHTEN OUT THIS MESS AND WE CAN GO ON FROM HERE. CONFLICT OF INTERESTS ARE PRESENT IN TRURO AND AT TOWN MEETINGS. WE ARE NOT, REPEAT, ARE NOT AFFECTED BY THE "RIVER'S ACT". OUR LETTER OF INTENT WAS SENT IN PRIOR TO THE ACT BEING SIGNED. WE HAVE A COPY OF THE LAW AS WELL AS OUR DATED AND STAMPED ORDER OF INTENT (STAMPED BY TRURO TOWN HALL AS RECEIVED). THE YACHT CLUB DOES NOT HAVE RUNNING DRINKING WATER, AND THEIR WATER SUPPLY IS ANYTHING BUT SANITARY. THEY SHOULD BE THE LAST TO TALK OF BACTERIA ESPECIALLY WHEN THEY SERVE FOOD THERE. IT IS ABOUT TIME THAT STONES STOP BEING THROWN. IF PEOPLE ARE CONCERNED ABOUT AN ABUTTING PROPERTY, THEN PERHAPS THEY SHOULD BUY IT TO PROTECT THEIR OWN INTERESTS AND STOP CRYING LATER. WE HAVE EVERY LEGAL RIGHT TO BUILD ON THIS PROPERTY. WHEN WE DO BUILD, THE STATE STANDARDS WILL BE MET. WE BOUGHT IN THE LOCATION WE WANTED AND WE DO NOT WANT THE HARBOR DESTROYED. FOR THE SAME REASON, THE SYSTEM DESIGNED IS EVEN BETTER THAN A TITLE V. TO OUR UNDERSTANDING, IT PURIFIES THE SYSTEM. WE ANTICIPATE OUR ABUTTERS WILL ONE DAY WANT TO REPLACE THEIR SYSTEMS AND UPDATE THEIR COTTAGES. OUR FAMILY SIZE IS FOUR AND WILL REMAIN FOUR WHEN WE BUILD. WE ARE IMPROVING OUR PROPERTY AND INCREASING THE TAX BASE FOR THE TOWN. THIS NEW SYSTEM WILL BE MAINTAINED, JUST AS A REGULAR SEPTIC SYSTEM NEEDS TO BE MAINTAINED. MAINTAINANCE SHOULD NOT BE AN ISSUE. WE WOULD NEVER WANT TO RISK OUR HEALTH OR THAT OF OTHERS. THAT IS EXACTLY WHY WE TOLD YOU OF THE POTENTIAL HAZARD OF THE SANITARY FACILITIES AS WELL AS THE RECEPTACLE FOR HUMAN WASTE BEING ON THE RAMP. YET, WASN'T IT THE HARBOR COMMISSION THE ONE'S WHO TOLD THE HARBORMASTER TO CLEAN THE WASTE STATION AND WASH HIS HANDS IN THE HARBOR? CONCERN FOR OUR ABUTTERS ALSO WAS A REASON FOR US TO ASK THAT THE FACILITIES BE MOVED FROM THEIR PROPERTY LINE. PEOPLE NEED TO WORK WITH THEIR NEIGHBORS AND WORK TOGETHER. OUR ABUTTERS DO NOT STAY IN THEIR COTTAGES. THIS IS OUR HOME THAT WE ARE PLANNING TO BUILD. AS OUR STUDIO EXISTS, WE DO NOT HAVE A LIVING ROOM, A KITCHEN, A BATHROOM AND A BEDROOM. IT IS A 20X20 BUILDING, MUCH SMALLER THAN WHAT CONSTITUTES A ROOM. THIS PROPERTY WILL BE BUILT ON SO IT IS A COMFORTABLE PLACE FOR US. SO, PLEASE YACHT CLUB OFFICERS, DON'T INSULT OUR INTELLIGENCE AND SUGGEST WE WILL USE MORE SEPTIC, WATER ETC. THE JEALOUSY MUST STOP AND MATURITY MUST BE IN PLACE. IF YOU WERE MORE CONCERNED ABOUT BEACH EROSION AND THE HARBOR, YOU WOULD NOT HAVE INSTALLED A SEA WALL. REMEMBER, WE ARE NOT THE NEW KIDS ON THE BLOCK. WE ARE IN OUR 12TH YEAR IN TRURO, HAVE PAID OUR TAXES, HAVE IMPROVED OUR PROPERTY AND MAINTAINED OUR SEPTIC SYSTEM. IT IS THE TOWN WHERE WE WANT TO BE AND WE HOPE THAT YOU CLEAN UP TRURO AND THE CONFLICTS THAT EXIST. REMEMBER, CONFLICT OF INTEREST IS ILLEGAL AND EXISTS IN TRURO. PLEASE SEND US THE LETTER FROM YOUR COUNSEL AND RESPOND TO US REGARDING OUR CONCERNS.

THANK YOU

John & Barbara Allen

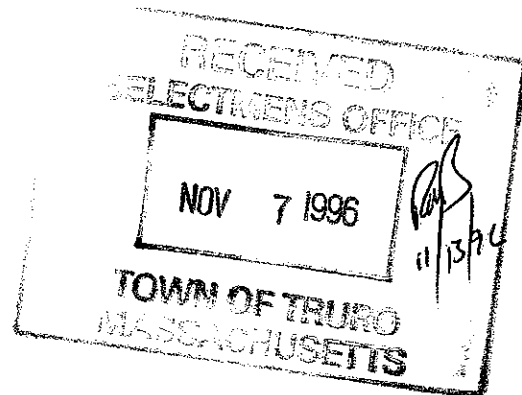
JOHN E. ALLEN

BARBARA M. CORDI-ALLEN

NOVEMBER 4, 1996

MR. JOHN E. ALLEN
MRS. BARBARA M. CORDI-ALLEN
146 PLEASANTVIEW AVE.
LONGMEADOW, MA 01106

TOWN MANAGER
TRURO TOWN HALL
TOWN HALL RD.
TRURO, MA



DEAR BUD:

FOLLOWING OUR TALK LAST WEEK, I FELT IT BEST TO PUT IN WRITING SOME OF OUR CONCERNS. IT SEEMS VERY DISCRIMINATORY THAT ONLY THE "BOATHOUSE" HAS ANY SO CALLED RESTRICTIONS. WHEN THE PROPERTY WAS LOST BY THE WORTHINGTON FAMILY, A SO CALLED RESTRICTION WAS PLACED ON THE PROPERTY BUT NOT ON THE PROPERTIES BEHIND THE "BOATHOUSE" WHICH ARE OWNED BY THE WORTHINGTON FAMILY. ALSO, THERE ARE OTHER PROPERTIES THAT ARE IN THE WETLANDS AND HAVE BEEN BUILT ON THIS YEAR. OBVIOUSLY, THERE SEEMS TO BE AN INCONSISTENCY WITH THIS AND I AM SURE YOU DO NOT WANT ANY FAVORITISM PLAYED IN TRURO. WHEN AND IF THERE ARE RESTRICTIONS TO A PROPERTY, IF YOU READ THE ZONING BYLAW ON PAGE 27, IT STATES THAT ANY VARIANCES MUST BE RECORDED. THIS WAS NOT DONE TO OUR PROPERTY AND THEREFORE IS NOT VALID. I AM ENCLOSING A COPY FOR YOU IN CASE YOU DON'T HAVE ONE. I EXPECT TO HEAR FROM YOU SOON.

THANK YOU.

John E. Allen
Barbara M. Cordi-Allen
JOHN E. ALLEN
BARBARA M. CORDI-ALLEN

FELCO, INC.

Engineering / Land Surveying
P.O. Box 1366
Orleans, Massachusetts 02653
(508) 255-8141
FAX (508)-255-2954

April 7, 1997

Truro Board of Health
Truro Town Hall
Box 2030
Truro, MA 02666

Re: Map #50, Parcel #21, #5 Yacht Club Rd., Truro, MA
John & Barbara Allen requesting variances
Deed Reference: Book: 10111 Page: 256

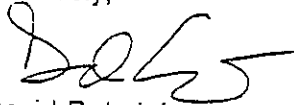
Dear Board Members:

Due to constraints such as lot size, lot configuration, topography, structure location(s), water supplies, and/or existing septic system locations, etc., FELCO requests the following variances to install a new subsurface septic system. These variances, if approved, shall provide to the best degree possible, the same environmental protection as required by the State Sanitary Code #310 CMR 15.000.

1. 7' from leach area to property line (pct. 20) - 310 CMR 15.211
2. 8' from leach area to property line (street)
3. modify excavation for construction in fill - 310 CMR 15.255
4. no reserve - 310 CMR 15.248

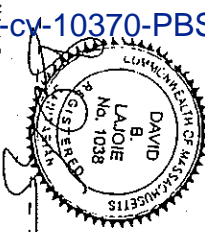
Please notify FELCO of the date and time when the hearing can be scheduled.

Sincerely,



David B. Lajoie
Registered Sanitarian

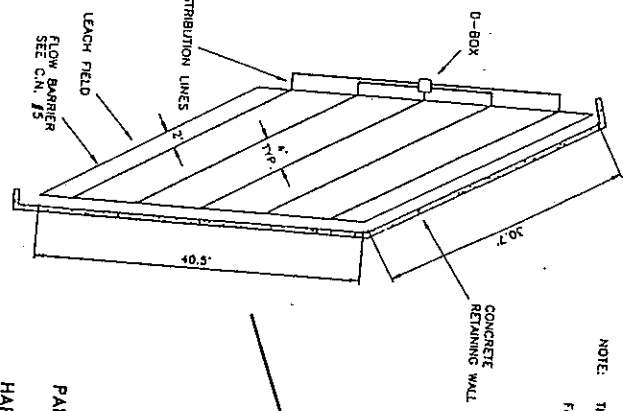
DBL:jmw
Encls.
cc: Abutters



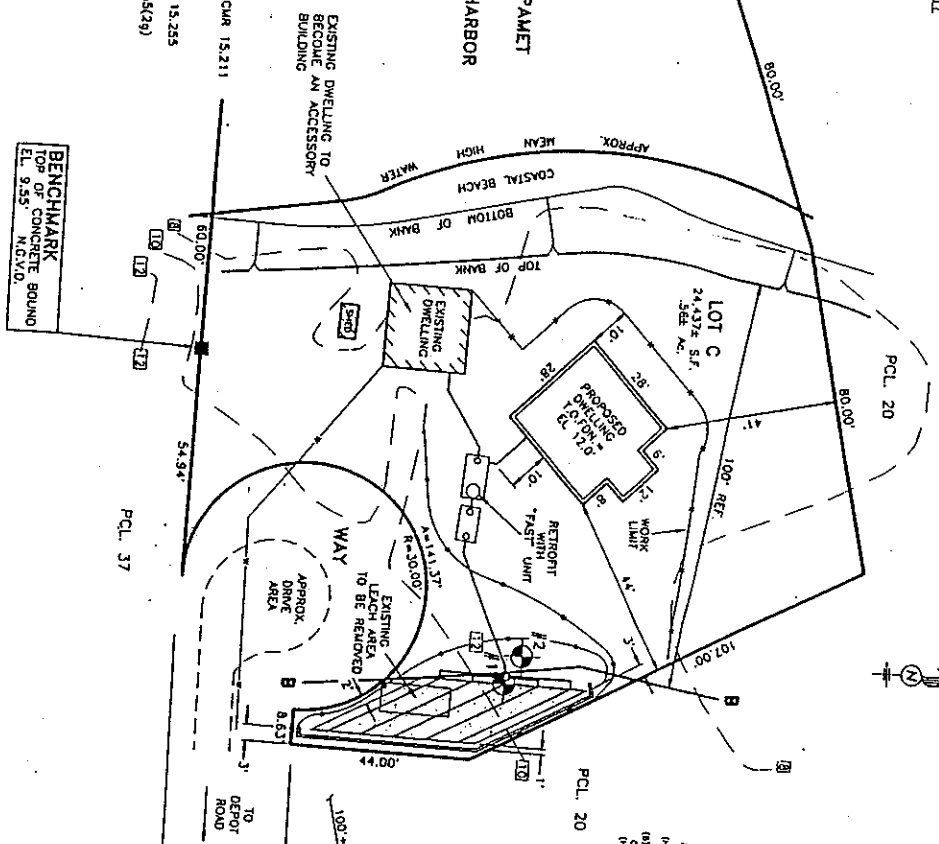
ALL WELLS NOT SHOWN EXCEED 200' FROM LOCUS SEWAGE.
 VARIANCE ZONING AND UTILITY SETBACK DIMENSIONS PRIOR TO CONSTRUCTION.
 THIS PLAN IS FOR SEWAGE DESIGN ONLY AND IS NOT INTENDED TO BE A SURVEY PLOT PLAN.

- VARIANCE REQUESTS**
1. 7' FROM LEACH AREA TO PROPERTY LINE (PCL 20) 310 CMR 15.211
 2. 8' FROM LEACH AREA TO PROPERTY LINE (STREET)
 3. MODIFY EXCAVATION FOR CONSTRUCTION IN FILL 310 CMR 15.285
 4. 9' FROM LEACH AREA TO RETAINING WALL 310 CMR 15.255(29)
 5. NO RESERVE 310 CMR 15.248

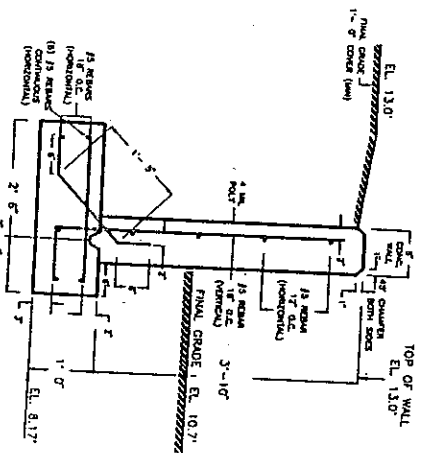
LEACH AREA DETAIL
 NO SCALE



NOTE: THIS PLAN REQUIRES CONSERVATION COMMISSION APPROVAL.
 FLOOD ZONE AA EL. 12



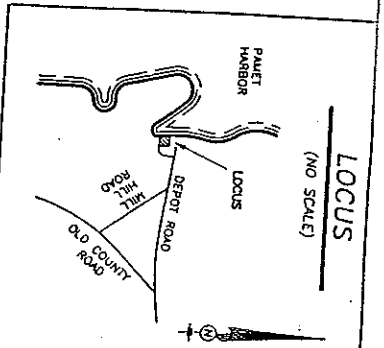
CONCRETE WALL DETAIL
 NO SCALE



NOTE: SOFT SLOPE OF CONCRETE WALL WITH WATERPROOF LINE INTERIOR WALL WITH 4 IN. POLY. BAGGED 3000 PSI CONCRETE THROUGHOUT TO REDUCE 30\"/>

LEGEND

- EXISTING SEPTIC
- ◐ EXISTING WELL
- ◑ PROPOSED WELL
- EXISTING CONTOUR
- - - PROPOSED CONTOUR
- W- WATER LINE
- ⊙ TEST HOLE
- ⊙ SEPTIC TANK (EXISTING)
- ⊙ "D" BOX
- ⊙ PUMP CHAMBER (EXISTING)



SITE & SEWAGE PLAN

LOCUS: 5 YACHT CLUB ROAD
 TRURO, MA

PREPARED BY: JOHN ALLEN
 FOR: LONGMEADOW, MA 01108

146 PLEASANTVIEW AVENUE
 LONGMEADOW, MA 01108

REFERENCE: ASSR'S MAP 50 PARCEL 21

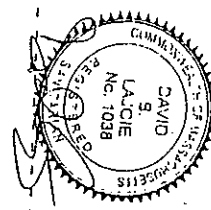
SCALE: 1" = 30' DATE: 9-11-96

SHEET No. 1 OF 2 JOB No. 96378

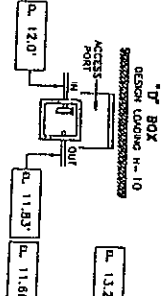
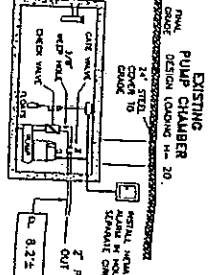
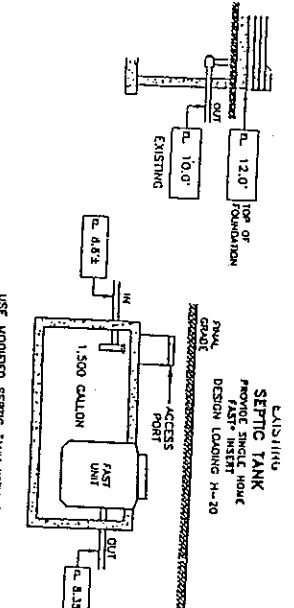
REVISIONS:

| | |
|---------|--|
| 5-1-97 | |
| 3-31-97 | |

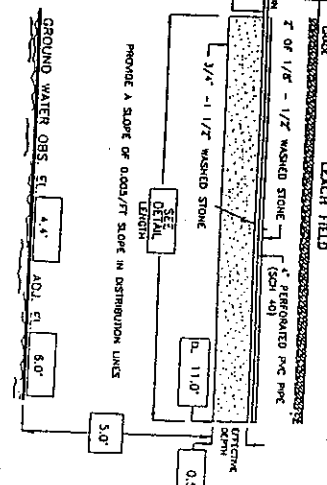
FELCO, INC.
 ENGINEERING - LAND SURVEYING
 P.O. BOX 1366 ORLEANS, MA 02653
 (508) 255-8141 (FAX) 255-2954



USE HOODING SEPTIC TANK WITH FAST INSERT PER MANUFACTURER'S SPECIFICATIONS
 * NOTE: FAST UNIT IS BE INSTALLED PER DEP PROVISIONAL USE APPROVAL DATED 3-31-95 AND PER MANUFACTURER'S SPECIFICATIONS



WHEN SYSTEM IS DROPTED ON SLOPE OF 1/8" PER FOOT, ONE INCH ABOVE OUTLET INVERT, INSTALL OUTLET LEVEL TWO FEET MINIMUM. PROVIDE A MINIMUM SLOPE OF 1/8" BELOW OUTLET INVERT. INSTALL ACCESS PORT OVER 'D' BOX WITHIN 5' (MIN) OF FINAL GRADE.



DEEP OBSERVATION HOLE LOG

| DEPTH | TEST BY: JASON ELLIS | TEST DATE: 5-1-97 | WITNESS: RIBBO BOH |
|-------|----------------------|-------------------|--------------------|
| 0.0' | LOAMY SAND | NO | LOOSE |
| 1.0' | LOAMY SAND | NO | LOOSE |
| 4.3' | WATER @ 4.3' | NO | LOOSE |
| 6.5' | WATER @ 6.5' | NO | LOOSE |

| DEPTH | TEST BY: JASON ELLIS | TEST DATE: 5-1-97 | WITNESS: RIBBO BOH |
|-------|----------------------|-------------------|--------------------|
| 0.0' | LOAMY SAND | NO | LOOSE |
| 1.0' | LOAMY SAND | NO | LOOSE |
| 4.3' | WATER @ 4.3' | NO | LOOSE |
| 6.5' | WATER @ 6.5' | NO | LOOSE |

GENERAL NOTES

1. ALL CONTRACTORS AND/OR INSTALLERS ARE RESPONSIBLE FOR PROVIDING AND MAINTAINING A SAFE WORK AREA.
2. CONTRACTORS AND/OR INSTALLERS: VERIFY ALL UTILITY LOCATIONS PRIOR TO CONSTRUCTION.
3. CONTRACTORS AND/OR INSTALLERS: VERIFY ALL WASTE LINE LOCATIONS PRIOR TO CONSTRUCTION.
4. CONSTRUCTION DETAILS TO BE IN ACCORDANCE WITH STATE SANITARY CODE 310 CMR 15.000 AND TOWN BOARD OF HEALTH REQUIREMENTS.
5. ELEVATION DATUM IS FROM ☐ U.S.C.S. QUAD. MAP. ☒ N.G.V.D.
6. MUNICIPAL WATER IS AVAILABLE ☐ YES ☒ NO
7. ANY ALTERATIONS TO DESIGN MUST BE APPROVED BY FELCO, INC. AND TOWN BOARD OF HEALTH.
8. ALL EXISTING SEWAGE TO BE PUMPED AND FILLLED WITH CLEAN MEDIUM SAND.
9. SEPTIC TANKS, DOSING CHAMBERS, GREASE TRAPS, AND DISTRIBUTION BOXES SHALL BE INSTALLED WATERTIGHT.
10. WHEN SEPTIC TANK, DOSING CHAMBERS, GREASE TRAPS, AND DISTRIBUTION BOXES ARE PLACED IN FILL, PROVIDE A LEVEL STABLE BASE WHICH HAS BEEN MECHANICALLY COMPACTED. VIRGIN GROUND WITH A 6\"/>
11. GROUND COVER OVER SEPTIC SYSTEM COMPONENTS SHALL NOT EXCEED 36\"/>

DESIGN

FLOW DETERMINATION ☒ BEDROOM DWELLING
 CABBAGE GRINDER ☒ NO ☐ YES
 FLOW RATE = GAL/DAY

SEPTIC TANK SIZING:
 x = GAL/DAY

USE: 1,500 GAL (EXISTING)

LEACHING FACILITY CALCULATIONS:
 PERCOLATION RATE IS < MIN/INCH CLASS

BOTTOM = x = GAL/DAY (S.F.)

USE: 40.5' LONG X 30.3' WIDE LEACH FIELD

AS SHOWN = 614± S.F.

W/ 0.5' EFFECTIVE DEPTH

CONSTRUCTION NOTES

1. WORK UNIT TO BE STAKED SLIT FENCE.
2. EXCAVATE ALL UNSATURABLE SOIL 2' AROUND LEACH FIELD.
3. EXCAVATE EXISTING SEWAGE AND UNSATURABLE SOIL AND REPLACE WITH CLEAN MEDIUM SAND.
4. FILL TO STAKE LEACH AREA FOR INSTALLATION.
5. INSTALL 40 GAL POLYMER FLASHING ON EQUIV. AS FLOW BARRIER AROUND ENTIRE LEACH AREA. FROM EL. 12.0' DOWN TO EL. 9.0'.
6. ALL DISTURBED AREAS TO BE REVEGETATED WITH NATIVE GRASSES UPON WORK COMPLETION.

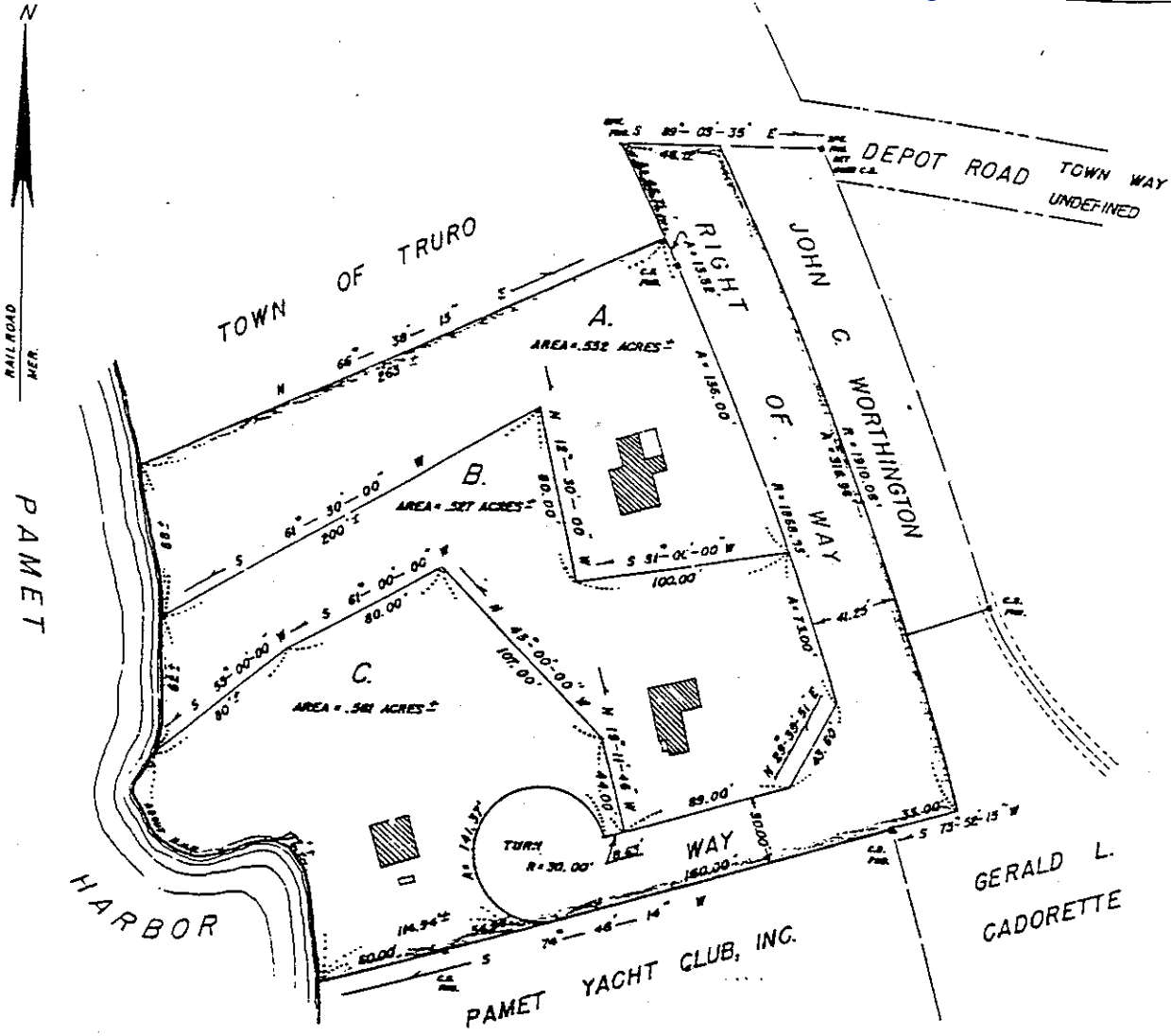
FELCO, INC.

ENGINEERING - LAND SURVEYING

| | |
|--------------------|--------------|
| JOB No: 96378 | NAME: ALLEN |
| DATE: 9-10-96 | SHEET 2 OF 2 |
| REVISIONS: 3-31-97 | 5-1-97 |

Plan Book 264 Page 18

RECEIVED
21. MAY 4 01 62 AM
NOTED



APPROVED:
[Signature]
[Signature]
[Signature]
DATE: Sept 26, 1972

SUBDIVISION PLAN OF LAND IN TRURO
MADE FOR
JOHN C. WORTHINGTON
SCALE: 1 IN. = 40 FT.
W. G. SLADE,
SURVEYOR
TRURO, AND MAR: STREET, WELLFLEET, MASSACHUSETTS
AUGUST, 1972
0:567

Thomas A. Kane, Clerk of the Town of Truro,
hereby certify that the notice of approval of
this plan by the Truro Planning Board has been
received and recorded at this office and no
appeal was received during the twenty days
after such receipt and recording of said notice.
Date: 09/27/72 Thomas A. Kane



Bund

**TOWN OF TRURO
BOARD OF HEALTH MINUTES
WEDNESDAY, JUNE 11, 1997**

The Truro Board of Health conducted a duly posted meeting on Wednesday, June 11, 1997 at 6:30 p.m., at the Town Hall Annex, 19 Town Hall Road, Truro. Present: Chairman Gary Palmer, Vice Chairman Maria Kuliopulos, Clerk Mark N. Peters, Alternate Samuel Armstrong, Administrative Secretary Carol A. Nickerson.

Mr. Palmer called the meeting to order at 6:30 p.m.

Mr. Peters moved to accept the minutes of the meeting from June 4, 1997. Mrs. Kuliopulos gave the motion a second. (Since Mr. Peters arrived late for the June 4th meeting, Mr. Armstrong served as alternate and as such, signed the minutes).

Mr. Palmer apprised the Board on the letter written to Mr. Garrett who questioned having to upgrade to Title V since a property transfer was within a family trust and felt they were exempt from the Title V regulations. In accordance with the law, it was deemed that an upgrade must take place.

After having received a "check list" from the Local Comprehensive Planning Committee on items they felt the Board of Health had not followed through on, Chairman Palmer wrote a letter to the LCPSC responding to each item, for the Board of Health to sign and forward to said committee. The Board approved this.

The Board received a letter from the DEP informing them that the Truro Fire Department had been given permission to use a structure at 4 Highland Road, N. Truro, for a fire training exercise which will include fire departments from Provincetown and Wellfleet.

On June 4, 1997, the Board had taken under advisement, a vote on the variance request for John and Barbara Allen, Yacht Club Road, Truro. After further discussion and a review of documents, Mr. Peters moved that the request for (5) variances be denied Mr. and Mrs. Allen based upon prior action by the Board of Health in 1992. Mrs. Kuliopulos gave the motion a second. 3-0, unanimous.

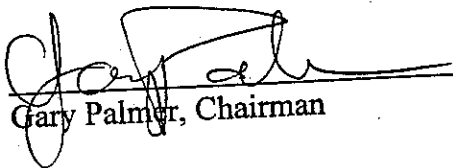
The Board was informed that the Summer Sanitarian is now inspecting businesses in Truro as part of the summer program offered by the County Health Department. Every two weeks she meets with Mrs. Nickerson and they work out a schedule for inspecting swimming pools, restaurants, food service locations, and others as requested. Ms Crowley will assist in this program as needed.

Board of Health Minutes
Wednesday, June 11, 1997
Page 2

The Board briefly discussed the upcoming Special Town Meeting to be held on June 18, 1997 and asked those members that can, to be present.

The next meeting of the Board of Health is scheduled for Wednesday, July 2, 1997.

There being no further business, Mr. Peters moved to adjourn the meeting at 7:40 p.m. Mrs. Kuliopulos gave the motion a second. 3-0, unanimous.

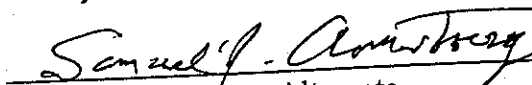


Gary Palmer, Chairman

Maria Kuliopulos, Vice Chairman



Mark N. Peters, Clerk



Samuel Armstrong, Alternate

/can



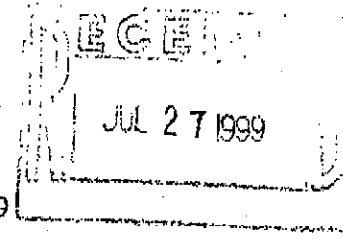
COMMONWEALTH OF MASSACHUSETTS
EXECUTIVE OFFICE OF ENVIRONMENTAL AFFAIRS
DEPARTMENT OF ENVIRONMENTAL PROTECTION
20 RIVERSIDE DRIVE, LAKEVILLE, MA 02347 508-946-2700

ARGEO PAUL CELLUCCI
Governor

JANE SWIFT
Lieutenant Governor

COPY

July 26, 1999



BOB DURAND
Secretary

LAUREN A. LISS
Commissioner

Ms. Jane Crowley, Health Agent
Board of Health
P.O. Box 2030
Truro, Massachusetts 02666

RE: TRURO—Subsurface Sewage Disposal-
Proposed Variances to 310 CMR 15.000
of Title 5 of The State Environmental
Code for John Allen and Barbara Cordi-
Allen, 5 Yacht Club Road

And

Transmittal No. P24485

Mr. John Allen and Ms. Barbara Cordi-Allen
146 Pleasantview Avenue
Longmeadow, Massachusetts 01106

Dear Ms. Crowley, Mr. Allen and Ms. Cordi-Allen:

The Department of Environmental Protection has conducted a Technical Review of the above-referenced application requesting variances to Title 5 and has determined that it cannot be approved as submitted for reasons which are specified below. For the purpose of this Department's comment on the proposed variance pursuant to 310 CMR 15.410 through 15.415, Title 5 of the State Environmental Code, this letter constitutes a denial in that the Department has determined that approval of the proposed variance(s) will not provide the same degree of environmental protection as required under Title 5. However, in accordance with 310 CMR 4.04(2)(b)2.a.iii and 310 CMR 4.10(7)(a)(3) (Category BRPWP59c) of the Timely Action and Fee Provisions, the application may be supplemented by the applicant to address the following deficiencies:

1. It is the Department's understanding that potable water is provided to this property by a private water supply well located on another lot by means of an easement. The plans must be revised to show the location of this well and the layout of the easement.
2. Means of water supply to the proposed dwelling must be shown on the plan.
3. The plan proposes four (4) bedrooms for a total sewage flow of 440 gallons per day (gpd) on a 24,437 square foot lot; however, the property is subject to nitrogen loading limitations pursuant to 310 CMR 15.214(2). Based on these limitations, the lot can only support a total sewage flow of 330 gpd.

4. The applicant must explore alternate soil absorption system locations or designs to provide the required excavation in fill pursuant to 310 CMR 15.255.

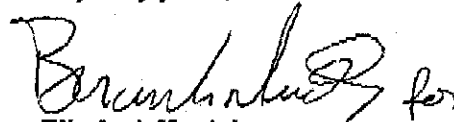
As 310 CMR 4.10(7)(a)(3)3b states, the applicant has sixty (60) days from the date of this letter (*see below) to address the listed deficiencies. Within the sixty (60) day time frame, the applicant is advised to allow for appropriate Board of Health action on the revised submittal since the Department of Environmental Protection's action may be its final action and, therefore, any further filing in this matter would be considered a NEW application. If the applicant cannot accommodate the schedule of the Board of Health within the sixty (60) day period, or for any other reason requires additional time, the applicant may, by written agreement with this Department, extend this schedule in accordance with 310 CMR 4.04 (2) (f).

The applicant is also advised that if he elects to proceed on the record as it now stands, this letter constitutes a denial of the variance. *This variance determination is an action of the Department. If the applicant is aggrieved by this determination, s/he may request an Adjudicatory Hearing in accordance with 310 CMR 1.00 and M.G.L. C.30A. A request for an Adjudicatory Hearing must be made in writing and postmarked within 30 days of the date of issuance of this determination.*

The enclosed Supplemental Transmittal Form should be completed and included as a cover sheet with any future submittal to this Department relating to the above matter. You need now only correspond to the Southeast Regional office of the Department of Environmental Protection, 20 Riverside Drive, Lakeville, Massachusetts 02347. THREE copies of engineering plans are required for Department review.

If you have any questions, please contact Brian Dudley at (508)946-2753.

Very truly yours,


Elizabeth Kouloheras
Cape Cod Watershed

Deadline Date: September 24, 1999
enclosure

K/BAD/

3

cc: Felco, Inc.
P.O. Box 1366
Orleans, MA 02653
Enclosure

E. James Veara, Esq.
Zisson and Veara
828 Main Street
Box 2031
Dennis, MA 02638-0043

DEP Watershed Permitting Program, Title 5 Section, Boston



COMMONWEALTH OF MASSACHUSETTS
EXECUTIVE OFFICE OF ENVIRONMENTAL AFFAIRS
DEPARTMENT OF ENVIRONMENTAL PROTECTION
SOUTHEAST REGIONAL OFFICE

ARGEO PAUL CELLUCCI
Governor

JANE SWIFT
Lieutenant Governor

COPY

RECEIVED
TRURO CONSERV COMM
JUNE 12, 2000

JUN - 8 2000

BOB DURAND
Secretary

LAUREN A. LISS
Commissioner

John Allen & Barbara Cordi-Allen
146 Pleasantview Ave.
Longmeadow, Massachusetts 01106

RE: TRURO—Wetlands
File No. SE 75-371
Superseding Order
of Conditions

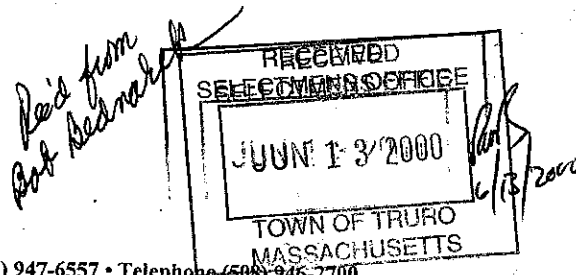
Dear Mr. Allen & Mrs. Cordi-Allen:

Following an in-depth review of the above-referenced file and in accordance with Massachusetts General Laws, Chapter 131, Section 40, the Department of Environmental Protection has issued the enclosed Superseding Order of Conditions. This Order approves the proposed project subject to certain conditions. The Department has determined that the project area is significant to the statutory interests of flood control and storm damage prevention.

The project proposes the construction of a single family dwelling, septic system with a FAST unit, deck, pool, garage, driveway and related appurtenances. The existing one bedroom dwelling is proposed to be elevated and slightly relocated. The proposed construction would occur within the 100 foot buffer zone to a Coastal Bank (310 CMR 10.30) and within Land Subject to Coastal Storm Flowage (310 CMR 10.04). The Federal Emergency Management Agency (FEMA) has mapped this area as subject to coastal storm inundation up to elevation 12 (Zone A4).

The enclosed Superseding Order of Conditions contains requirements to protect the interests of the Act. It is the opinion of the Department that, as conditioned herein, the proposed project adequately protects the interests of the Act.

In the opinion of the Department, the reasons given here are sufficient to justify this Superseding Order of Conditions. However, the Department reserves the right, should there be further proceedings in this matter, to raise additional issues and present further evidence as may be appropriate.



20 Riverside Drive • Lakeville, Massachusetts 02347 • FAX (508) 947-6557 • Telephone (508) 946-2700
This information is available in alternate format by calling our ADA Coordinator at (617) 574-6872.

DEP on the World Wide Web: <http://www.magnet.state.ma.us/dep>

Printed on Recycled Paper

ZISSON AND VEARA
ATTORNEYS AT LAW

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EDWARD E. VEARA
JILL J. BROFSKY
E. JAMES VEARA
PAUL V. BENATTI
SARAH A. TURANO-FLORES
JOHN R. COSTELLO
BENJAMIN E. ZEHNDER
ROXANNE E. SAMII
LORI CURTIS KRUSELL

865 PROVIDENCE HIGHWAY
BEDFAM, MASSACHUSETTS 02026-6825
TEL (781) 329-1110
FAX (781) 329-5119

828 MAIN STREET-BOX 2031
OLD KINGS HIGHWAY
DENNIS, MASSACHUSETTS 02638-0043
TEL (508) 385-6031
FAX (508) 385-6914

June 19, 2000

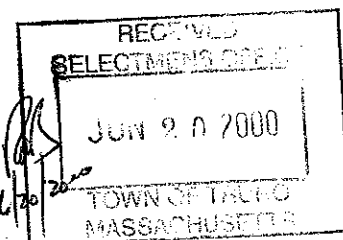
Docket Clerk
Office of the General Counsel
Department of Environmental Protection
One Winter Street
Boston, Massachusetts 02108

Re: Request for Adjudicatory Hearing
DEP File No. SE 75-459
John E. Allen and Barbara Cordi-Allen, Applicants
Property: 5 Yacht Club Road, Truro, Massachusetts

Dear Sir or Madam:

This office serves as Town Counsel to the Town of Truro, Massachusetts. The Town of Truro owns property abutting the property owned by John Allen and Barbara Cordi-Allen on 5 Yacht Club Road, Truro, Massachusetts. On June 8, 2000, the Department of Environmental Protection issued Mr. and Mrs. Allen a Superseding Order of Conditions, approving with certain conditions the Allen's proposal to construct a 54-foot long extension to an existing pier with a 26-foot long ramp and two (2) 6 x 20 foot long floats in and over the waters of Pamet Harbor. This letter shall serve as a formal request by the Town of Truro, pursuant to the provisions of 310 C.M.R. 10.05(7)(j), for an Adjudicatory Hearing. Enclosed herewith are copies of the Request for Departmental Action Fee Transmittal Form and the filing fee check for One Hundred (\$100.00) Dollars, both of which were forwarded to the DEP Lock Box on today's date.

The Allens filed their Notice of Intent for the proposed pier with the Truro Conservation Commission on May 27, 1999. With the filing, the Allens submitted a "Preliminary Plan to Accompany Petition of John E. Allen & Barbara Cordi-Allen to Amend License #4304 for an existing Pier, Ramp and Float Assembly In and Over the Waters of Pamet Harbor, Truro, MA," dated with revisions through February 11, 1999. The plan depicted a 4' x 54' permanent pier extension to an already existing 4' x 80' permanent pier, a 4' x 26' ramp, and two (2) 6' x 20' floats



ZISSON AND VEARA

Department of Environmental Protection
June 19, 2000
Page 2

extending horizontally at the end of the pier, for a total length of 170'. As proposed, the finished product would extend beyond the mean high water mark, over a salt marsh, beyond the mean low water mark, to the boundary of the extreme low water mark. Public hearings were held on the project on June 7, 1999 and June 16, 1999. At its final hearing on June 16, 1999, the Truro Conservation Commission voted to deny the project because the information submitted by the applicant was not sufficient to describe the site, the work or the effect of the work on the interests identified in the Wetlands Protection Act. Specifically, the application did not contain, among other items, the following documentation:

1. Complete description of proposed construction including plans (the plan submitted was stamped "Preliminary"), details, profile, specifications, and construction materials, including preservatives and chemical finishes;
2. The exact size and locations of the proposed pilings;
3. Overall footage and area of bottom to be shaded;
4. Area of float to rest on bottom at low water;
5. Method of placement of piles, whether dug or driven, from barge or otherwise;
6. Relation of floats to property line;
7. Relation of proposed construction to sidelines of property; and
8. Information relative to which parts of proposed construction would be permanent and which will be removed in winter and how removal will take place.

The Commission issued its Order of Conditions on June 29, 1999, denying the project and citing the above-referenced missing documentation as being necessary to decide the effect of the proposed project on the following interests of the Wetlands Protection Act (hereinafter, "the Act"): flood control, land containing shellfish, fisheries, storm damage protection and prevention of pollution. The Allens appealed the Commission's decision on June 30, 1999, requesting a Superseding Order of Conditions. A DEP on-site inspection was conducted at the site on Friday, October 29, 1999. At the on-site inspection, Mr. Jim Mahala of the DEP asked the Allens to submit the information lacking on the "preliminary" plan submitted with their original Notice of Intent, including a cross-section of the proposed pier and all construction details, including specifications and construction materials.

After the DEP on-site visit, the Truro Conservation Commission received no further information relative to the proposed project from either the applicant or the DEP until June 12, 2000, when it received a copy of a DEP Superseding Order of Conditions approving the project in accordance with a revised plan dated April 3, 2000. No further details regarding construction details, specifications, or possible effects on the interests identified under the Act were ever forwarded or received by the Truro Conservation Commission. The Commission never received a copy of the plan until after the Superseding Order of Conditions was issued.

As depicted on the final plan, last revised on April 3, 2000, the project still extends beyond the mean low water line, to extreme low water. Therefore, it continues to span the entire salt marsh and all of the tidal flats (which constitute a coastal beach under the Act). Moreover, the new plans confirm that the entire project would fall within Land Subject to Coastal Storm Flowage (flood zone

ZISSON AND VEARA

Department of Environmental Protection
June 19, 2000
Page 3

A4, located at elevation 12). The new materials depicting a cross section of the project reveal that the end of the proposed ramp and proposed floats will rest on the bottom of the flats during low tide.

As the Truro Conservation Commission determined, the DEP found that the proposed project area is significant to the statutory interests of flood control, storm damage prevention, prevention of pollution and the protection of land containing shellfish and marine fisheries. It is the Town of Truro's position that the proposed project does not adequately protect these interests under the Act. Fourteen additional permanent 8" pilings will be driven into an existing salt marsh, land containing shellfish and land under the ocean. The volume (quantity) of sediments, their form, and their ability to respond to wave action will all be compromised by these permanent structures. Water circulation and the distribution of sediments will also be disrupted by the existence of these permanent structures. The adverse impact of these permanent structures on water quality and shellfish habitat is not adequately addressed by the Superseding Order of Conditions (hereinafter, "SOC") which primarily addresses impacts during construction. The SOC likewise does not address the adverse impacts this permanent structure will have on the adjacent properties as a result of the alterations in natural drainage which will occur as a result of the permanent structure. Nor does the SOC address the fact that these structures will adversely effect the tidal flats by increasing erosion and decreasing the volume of the adjacent coastal beach. The permanent aspects of this structure will also completely traverse the widest part of the salt marsh existing in front of this property, a distance of approximately 120', thus disturbing the growth, composition and distribution of salt marsh vegetation, and the flow and level of tidal and fresh water. As a result, the proposed structure will adversely impact the ability of the marsh to protect marine fisheries and prevent pollution and storm damage. Moreover, the entire project falls within the coastal flood zone and will likely harm the protected resource areas and prevent them from performing their natural functions during storm events.

Accordingly, for the foregoing reasons, the Town of Truro objects to the issuance of the SOC. The SOC is inconsistent with the Wetlands Protection Act and the regulations issued by the Department and does not contribute to the protection of the interests identified in the Act. Therefore, the Town of Truro requests that the Department rescind the Superseding Order of Conditions and deny the Allens permission to construct the proposed pier. A copy of this request has been forwarded to the applicants and their attorney per the provisions of 310 C.M.R. 10.05(7)(j).

Should you have any questions, I can be contacted at my firm's Dennis office. Thank you for your time and attention to this matter.

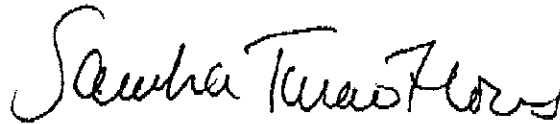
ZIBSON AND VEARA

Department of Environmental Protection

June 19, 2000

Page 4

Sincerely,



Sarah A. Turano-Flores

STF/

enclosures

VIA OVERNIGHT DELIVERY

cc: Mr. and Mrs. Allen
Attorney Henchy
Mr. Jim Mahala - DEP/SERO
Truro Conservation Commission
Mr. Roland W. Breault, Jr.

COMMONWEALTH OF MASSACHUSETTS
TRIAL COURT DEPARTMENT
SUPERIOR COURT

Barnstable, ss.

Civil Action No. 03-404

JOHN ALLEN and BARBARA *
CORDI-ALLEN, *
Plaintiffs *

v. *

TOWN OF TRURO-BOARD OF *
SELECTMEN OF THE TOWN *
OF TRURO, *
Defendant *

AFFIDAVIT OF ROLAND
W. BREAUT, JR., TRURO
TOWN ADMINISTRATOR

I, Roland W. Breault, Jr., first having been duly sworn, upon oath do depose and say the following:

1. I am an adult; I reside in Sandwich, Massachusetts; I am currently the Town Administrator for the Town of Truro, Barnstable County, Massachusetts, and have served in this same capacity since February 5, 1996;

2. In 1994, after 7 years of public hearings, the Town of Truro and the Massachusetts Office of Coastal Zone Management formally adopted the "Pamet Harbor Management Plan, Truro, Massachusetts." *See a true and accurate copy of the introductory section of the Plan, which is entitled "Purpose and Introduction," attached hereto and incorporated herein as Exhibit A.*

3. According to the Plan, Pamet Harbor is Truro's only boating harbor and has its only boat launching facility. The town's major shellfishing beds and saltwater wetland system is found here. It also has great historical significance, exemplified by the fact that

Truro's first English settlers colonized the river mouth, where they were, according to the Plan, attracted by its ready access to Cape Cod Bay, its natural bounty and its sturdy, surrounding hills. *See Exhibit A.*

4. The Plan states that its primary purpose is to restore the usefulness of Pamet Harbor, while protecting its various natural resources, water quality and visual appeal. *See Exhibit A.*

5. The Plan explicitly identified as its primary goals and objectives navigation, water quality, shellfishing, public access, moorings, commercial fishing and natural resource protection. *See true and accurate copies of Pages 44-45 and all of Section 6 of said Plan, attached hereto and incorporated herein as Exhibit B.*

6. Upon adoption, the plan became the Town of Truro's official position on issues related to the "Harbor Planning Area." *See Page 3 of Exhibit A.*

7. The "Harbor Planning Area" includes all of the properties surrounding the basin and the channel out to the Bay. *See true and accurate copies of Pages 6 and 7 of the Plan, describing the Harbor Planning Area, and a Map depicting said Area, attached hereto and incorporated herein as Exhibit C.*

8. In the Fall of 1999, implications related to the fact that the Town of Truro did not own all of the tidelands in the Pamet Harbor "basin" where the Town maintains its mooring basin or in the channel areas leading to Cape Cod Bay, where the Town conducts its annual dredging, became clear to the Board of Selectmen.

9. A true and accurate aerial photograph of the Pamet Harbor Basin and Channel taken in the year 2000 is attached hereto, incorporated herein, and labeled Exhibit D.

10. These implications were made evident during several high profile public hearings held in connection with the Plaintiffs' proposal to add a ninety (90') foot extension to an already existing eighty (80') foot permanent pier on their property. As proposed, the finished product would extend beyond the mean high water mark, over a salt marsh, beyond the mean low water mark, to the boundary of the extreme low water mark.

11. The proposed pier would extend so far into the channel and the established mooring basin of Pamet Harbor that it would have displaced several established moorings. In fact, it would extended beyond the mid-line thereby creating a major navigational hazard.

12. Given the implications of the pier proposed by the Plaintiffs, the Selectmen determined that ownership of the area within the harbor's mooring basin and channel was vital to the proper management and preservation of the harbor. Thus, the Board of Selectmen authorized an investigation into a possible taking of the privately held tidelands within the Harbor Planning Area, and requested that the necessary surveys, appraisals and title searches be performed.

13. In August of 2000, the investigation was completed and the Board of Selectmen voted to pursue an eminent domain taking.

14. In September of 2000, certified mailing went out to each of the affected property owners. This mailing included a copy of the survey, showing the area of taking for each parcel and a specific request that each party contact Town Counsel to set up an appointment to meet with a subcommittee of the Board of Selectmen and Town Counsel to negotiate the takings process.

15. With the exception of the Plaintiffs, every property owner contacted the Town and began negotiating agreements for the takings of the tidelands portions of their property.

16. The Plaintiffs refused to accept the certified mailings.

17. As a result, in October of 2000, the Hampden County Sheriffs served the Plaintiffs with the notice and copy of the takings plan.

18. In November of 2000, the Massachusetts Department of Environmental Protection denied the Plaintiffs a General Laws, Chapter 91 Waterways License for their proposed pier extension. *A true and accurate copy of the Denial is attached hereto, incorporated herein and labeled Exhibit E.*

19. The Denial of the Waterways License was based on the primary justification that the project, as proposed, would significantly interfere with the public rights of navigation in Pamet Harbor. *See Page 4 of Exhibit E.*

20. Upon information and belief, no subsequent appeal was taken from this Denial.

21. Believing that public ownership of the tidelands within Pamet Harbor was the only way to adequately preserve and manage the Town's only Harbor, the Selectmen decided to continue to pursue the taking.

22. In March of 2001, certified letters were again sent to each of the property owners, including the Plaintiffs, asking that they finalize negotiations.

23. All the property owners, including the Plaintiffs, responded to this March mailing.

24. The Plaintiffs response was forwarded by their attorney, who succinctly conveyed to Town Counsel that the Allens were adamantly opposed to the taking and would not agree to the offered damage award.

25. All other property owners responded favorably to the mailing and, by late 2001, the Town had reached agreement with all of those owners relative to the taking.

26. At a Special Town Meeting held on January 29, 2002, by a vote of 238 to 2, the Truro Town Meeting approved Article 2 on the Warrant for said Meeting, authorizing the Board of Selectmen to conduct the eminent domain taking of the privately held tideland areas. An Order of Taking then was recorded in the Barnstable County Registry of Deeds for four of the privately held parcels of tidelands on February 15, 2002, including the Plaintiff's tidelands. *True and accurate copies of said Town Meeting Vote and Order are attached hereto, incorporated herein, and labeled Exhibit F. A true and accurate copy of the takings Plan of Land is attached hereto, incorporated herein, and labeled Exhibit G.*

27. The taking explicitly excluded the rights of the Plaintiffs and the Yacht Club to maintain their existing piers in their existing locations.

28. Because the Plaintiffs and the Yacht Club already had existing piers within the tidelands area, which piers they were permitted to maintain after the taking, and because the other two private property owners did not have existing piers, the damage awards for the other two private owners were larger than the damage awards for the Plaintiffs and the Yacht Club.

29. All damage awards were based upon appraisals of the fair market value of the tidelands, as appraised by a Massachusetts Licensed Real Estate Appraiser.

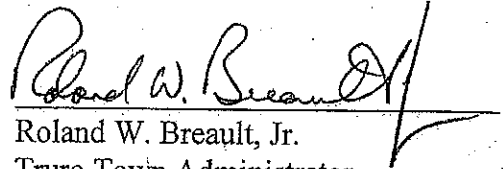
30. In a separate negotiation with the Truro Conservation Trust, which owned the greatest portion of the tidelands area in question, the Trust donated an easement to the Town for various harbor management and preservation purposes, including but not limited to, the right to maintain up to 45 moorings in the basin, the right to promote the growth of the shellfish population, the right to promote shellfishing, the right to promote navigation and harbor safety, and the right to protect water quality, shellfish and other natural resources within the easement area. *A true and accurate copy of the as-recorded Deed of Easement is attached hereto, incorporated herein, and labeled Exhibit H.*

31. After the Order of Taking was put on record, Notices of Taking were sent to each of the affected property owners by certified mail pursuant to the provisions of General Laws, Chapter 79.

32. Three of the four private property owners named in the Order of Taking accepted their damage awards as settlement in full of their claims against the Town for the Taking, pursuant to the provisions of General Laws, Chapter 79, Section 39. *True and accurate copies of the fully executed Release and Request for Payment forms are attached hereto, incorporated herein, and labeled Exhibits I, J and K.*

33. The Plaintiffs are the only parties who failed to accept the offered damages as settlement in full of their claims. In fact, the Plaintiffs have even failed to accept the proffered damage award as payment pro tanto of their claims, and the money presently remains in an interest-bearing escrow account.

Signed under the pains and penalties of perjury, this 12th Day of August, 2003.


Roland W. Breault, Jr.
Truro Town Administrator

CERTIFICATE OF SERVICE AND OF
COMPLIANCE WITH CIVIL TIME STANDARDS

I, Sarah A. Turano-Flores of the law firm of Zisson & Veara, hereby certify that I have notified Burton F. Berg, attorney for the Plaintiffs, of the within **AFFIDAVIT OF ROLAND W. BREault, JR.** by mailing, postage prepaid, a copy of it to him at his office address: Burton F. Berg, P.C., 34 Mechanic Street, Worcester, MA 01608. I hereby further certify that I have served this motion in accordance with the provisions of Superior Court Rule 9A and Mass.R.Civ.P. 12(b)(2).

Dated at Dennis, Massachusetts this 14th day of August, 2003.


SARAH A. TURANO-FLORES

Final Report
PAMET HARBOR MANAGEMENT PLAN
Truro, Massachusetts

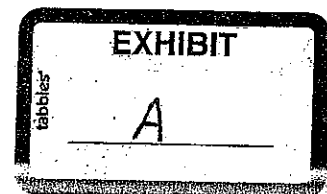
June 1994

Prepared for:

Harbor Management Planning Committee
Town of Truro
Truro, MA 02666

Funding Assistance Provided By:

Massachusetts Coastal Zone Management
Harbor Planning Grants Program



1. PURPOSE and INTRODUCTION

EXECUTIVE SUMMARY

This Pamet Harbor Management Plan represents a planning effort begun in 1987 and completed in 1994. The intent of the Plan, agreed upon by town and state officials, and citizens at public hearing, is to restore the usefulness of Pamet Harbor, while protecting its varied natural resources, water quality and visual appeal. Maintenance dredging is recommended to enhance navigation, water quality and beach nourishment. Other recommendations promote compatible public access, scenic qualities, shellfish and appropriate land use policies. A Harbor Management Planning Committee, composed of town officials, harbor users and local interest groups, guided the plan's development with consultant expertise and technical assistance and grant funding from the Massachusetts Coastal Zone Management Office (MCZM). The Plan is intended to be consistent with the 1988 Harbor Planning Guidelines of MCZM.

1. PURPOSE AND INTRODUCTION

Pamet Harbor in Truro, Massachusetts is locally unique in many respects. The Pamet is Truro's only floating harbor and has its only boat launching facility. The town's major shellfish beds and saltwater wetland system is found here. The first English settlers of Truro colonized the river mouth, attracted by its ready access to Cape Cod Bay, its natural bounty and its sturdy, surrounding hills.

Today, the Pamet is a magnet for residents and tourists alike who want to enjoy the ever-changing variety offered by the nine-foot tidal range influencing the harbor. In the morning, the low tide bares the expansive tidal flats where gulls and terns sit musing about their next meal, while shellfishermen begin work for theirs. The afternoon will gather enough seawater to lift the moored fleet high off the mud and encourage visions of maritime grandeur for the little seaport. Fishermen and daysailers will hustle back in, seizing the opportunity afforded by the window of high tide navigability. At dusk, the sun will set directly behind the channel mouth out in the broad bay, luring other citizens down to the basin to salute the remains of the day. In 1987, the Pamet was designated by the

Massachusetts Department of Environmental Management as a "local scenic river," the only one on Cape Cod recognized for its recreational assets and aesthetic qualities.

The intent of the Pamet Harbor Management Plan is to restore the usefulness of the harbor, while protecting its natural resources and scenic beauty. As a small harbor subject to extreme tidal change (nine-foot rise and fall), the Pamet nevertheless hosts many varied resources and activities. This diversity of natural and human components has sometimes produced competition and conflicts. This Harbor Plan examines these resources, identifies issues relating to their use, and recommends strategies to harmonize conflicts, thereby maximizing enjoyment of the area. Through implementation of the policies and actions recommended in this plan, Truro can help to ensure that the concentrated diversity now offered by the tiny Pamet Harbor can persist and even be enhanced.

Truro exhibits some characteristics which set it apart from other Cape Cod towns and which mandate special consideration. These characteristics include lack of industry, small tax base, and orientation to water-dependent uses. Development pressures in Truro take on a different guise than in many other Cape towns, which are fighting marina development and condominiums on the waterfront. Because of the small scale of the Pamet, even minor changes can seem significant. Through development of a pending Local Comprehensive Plan and this Harbor Management Plan, Truro residents will chart the course for future land development and water uses in Pamet Harbor. Project team members will coordinate their efforts with the ongoing Local Comprehensive Plan (LCP) to ensure that the two resulting plans provide a coherent framework for future land and water-use decision-making.

The Pamet Harbor Management Planning Committee (HMPC) was formed by Truro Selectmen in 1987 at the request of the Harbor Commission. In 1988, the Committee drafted a request for proposals to hire a consultant to advise on the Harbor Plan. In 1989, the Town was awarded a \$14,000 matching grant for the Harbor Plan from the

Massachusetts Coastal Zone Management Office (MCZM). In 1990, the request for bids was issued, but owing to complications of the then-new state Uniform Procurement Act, no consulting contract was awarded. In 1991, the Committee worked with MCZM to issue a new proposal request based on the 1988 (reprinted 1990) harbor planning guidelines of MCZM. In February, 1992, the Committee issued the request, screened four applicants, and, in July, 1992, signed a contract with Horsley & Witten, Inc., an environmental consulting firm in Barnstable.

In January, 1993, the environmental consultant's contract was extended, by mutual consent, in order to accommodate results from a separate study by the Massachusetts Department of Environmental Management of the harbor's bathymetry, in anticipation of dredging the harbor channel. Horsley & Witten, Inc. submitted a draft Harbor Plan to the Town in September 1993. A revised draft was submitted in January 1994, after review of town officials' and MCZM's comments on the draft plan and a public hearing held in September 1993, which focused on the Goals and Objectives. A public hearing on the revised draft was held in March 1994, which focused on the Action Plan. The final plan was delivered to the Town in June 1994.

Under the provisions of the Harbor Planning Grants Program of MCZM, the Town of Truro established a work program consistent with MCZM Harbor Planning Guidelines and accepted MCZM's grant condition that the plan's objectives, standards and policies should be consistent with those of the Executive Office of Environmental Affairs and its agencies. The HMPC believes that this plan meets those criteria and further believes that implementation of this plan will be consistent with MCZM policies.

Upon adoption by the Truro Board of Selectmen and MCZM, this plan should be considered the Town of Truro's official position on issues related to the harbor planning area. An implementation committee, designated by the Selectmen of the Town, will be given the responsibility of ensuring that the recommended actions of this plan are implemented by the Town. It will no longer be merely the opinions of the HMPC or its consultants.

HMPC's concerns are amplified by the LCP, they are noted in the Harbor Plan (4.III.)

B. Water Resources

The LCP identifies bacterial pollution of the Pamet as a major surface water quality issue. Its understanding of this issue conforms with that of HMPC. The LCP also confirms the HMPC's concern about stormwater and non-point sources of contamination.

C. Capital Facilities

The LCP does not include maintenance dredging and other harbor capital improvements in its analysis for future financial planning and perhaps should include them in both the narrative and infrastructure map for this section.

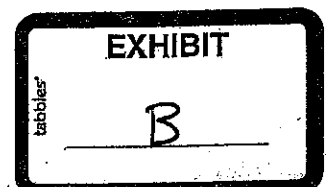
D. Wetlands, Wildlife and Plant Habitat

The LCP identifies the Pamet River as meriting a state designation as an Area of Critical Environmental Concern or county designation as a District of Critical Planning Concern. The HMPC takes no position on this issue, but believes that a strong, locally-adopted wetlands protection bylaw may accomplish the same end, while keeping primary regulatory control local. The HMPC and LCP both endorse the idea of a local wetlands bylaw.

V. Priority Issue: Enhancing Navigability

On October 12, 1993 the Harbor Management Planning Committee deliberated on the emphasis and priority of issues identified in the draft harbor plan. The list agreed upon by the Committee, in descending order of importance, is as follows:

- Navigability and Harbor Safety
- Water Quality
- Shellfishing



- Public Access
- Moorings
- Facilities for Some Commercial Fishing
- Fiscal Management
- Land Use - Landscape and Visual Quality*
- Natural Resource Protection*

*The last two goals were seen not so much as lower priority issues, but as themes that should be considered throughout the recommendations pertaining to the other issues.

The priority of the Navigability and Harbor Safety issue is clearly related to the fact that boating is severely hampered in Truro's only harbor owing to shoaling problems in the channel and boat basin. The Harbor Plan examines this issue and the options to correct this perceived deficiency in Chapter 7 (Navigation Alternatives Analysis).

6. GOALS, OBJECTIVES, and POLICIES

6.0 GOALS, OBJECTIVES, AND POLICIES

Based on the findings and analysis, priorities and options discussed above, the HMPC has adopted the following goals, objectives and policies outlined below.

I. Navigation and Harbor Safety

Goal: To restore the usefulness of the Pamet Harbor system as a tidal harbor through enhancing the navigability of the harbor system while ensuring public safety.

Objectives:

1. Provide for safe and adequate access to and from Cape Cod Bay by recreational and commercial boats typically used in the Pamet Harbor system at all periods over an average tidal cycle.
2. Minimize potential conflicts between use of the water for navigation versus other recreational uses.

Policies:

1. Work with state and federal officials to ensure periodic maintenance dredging of channel and mooring basin in Pamet Harbor.
2. Ensure navigational safety through clearly marking and patrolling all navigational channels and mooring areas.
3. Restrict the location of moorings and docks/piers so as to prevent encroachment into navigational channels and open water recreational areas.
4. Establish an emergency response plan which adequately addresses typical harbor safety emergencies.

5. Establish safety regulations for harbor use through town waterway regulations.
6. Promote safe navigational practices through public education and enforcement of safety regulations.

II. Water Quality

Goal: To restore and maintain the Pamet Harbor system's water quality to meet state standards for water-related activities and recreation.

Objectives:

1. Maintain the water quality of the Pamet Harbor system in areas which could support water-contact sports (swimming) and recreation.
2. Improve water quality in Pamet Harbor in areas currently closed to shellfishing due to high bacteria counts.
3. Improve the town's ability to detect changes in water quality in the Pamet Harbor system and to identify trends.
4. Minimize release of contaminants associated with typical land and water activities.
5. Prohibit development in critical areas and minimize disruption of natural systems, such as wetlands, which aid in maintaining water quality.
6. Minimize potential degradation of water quality due to accidents or spills involving contaminants.
7. Minimize degradation of water quality due to waterfowl.

Policies:

1. The level of key chemical and bacteriological contaminants shall be monitored on at least an annual basis.
2. Deterioration of water quality shall be minimized through eliminating all direct discharges of untreated stormwater throughout the Pamet watershed, particularly Route 6, Snows Landing, and runoff from the harbor parking lot.
3. Public feeding of wildlife shall be prohibited throughout the Pamet Harbor system.
4. Release of nutrients to the Pamet Harbor system shall be minimized through use of best management practices for agricultural practices, such as proper manure storage.
5. The discharge of sanitary wastes from boats shall be prohibited unless discharged into an approved sanitary waste disposal site.
6. Educate residents about the connection between typical land use activities and degradation of water quality (for example; use of lawn fertilizers and improper disposal of household hazardous wastes).
7. Land zoned for commercial, institutional or office uses shall meet environmental performance standards aimed at protecting water quality and shall be sited in a way which minimizes impact to sensitive resources.
8. Establish an emergency contingency plan for hazardous materials spills and ensure that all local emergency spill response personnel are trained and are knowledgeable of proper response procedures. Prohibit fueling of boats from shoreside facilities.

III. Shellfishing

Goal: To restore the usefulness of the Pamet as a safe and productive shellfishery, symbolic of the health and quality of the Town's major wetland system.

Objectives:

1. To restore and maintain shellfishing waters which meet or exceed state surface water quality standards, including anti-degradation standards, particularly for bacterial contamination, for significant portions of downstream sections of the Pamet and its tidal tributaries, to enable the shellfishery to be opened and sustained.
2. Restore and maintain shellfish stocks, particularly quahogs, soft shell clams and blue mussels.
3. Investigate the feasibility of private aquaculture in areas that do not conflict with navigation, public recreation, and recreational shellfishing, as a way to promote jobs and income based on renewable natural resources and as a means to enhance natural shellfish recruitment. (Refer to Map 3.)

Policies:

1. Re-establish a shellfish propagation program.
2. Investigate standards which allow for private aquaculture through the town's shellfishing regulations.
3. Prohibit any water and land activities, such as moorings, which would interfere with shellfishing in designated areas.
4. Improve water quality such that shellfishing would be permitted in the Pamet Harbor system.

IV. Public Access

Goal: Maintain and improve public access to the harbor area for residents and visitors alike in order to provide for a quality outdoor experience offering a range of water-related activities and experiences while also ensuring the protection of the harbor's sensitive areas and marine resources.

Objectives:

1. Provide public access to the Pamet Harbor system for a range of uses both in and along the water including water-contact sports (swimming), finfishing, shellfishing, recreational boating, hiking, and environmental education.
2. Maximize public access to the waterfront from town-owned land. (Example: canoe landing on town-owned land.)
3. Provide handicapped access to the waterfront from public lands. (Example: proposed pier.)
4. Minimize negative impacts from public access to sensitive areas and marine resources.
5. Establish hiking trails on town-owned parcels located along the waterfront in order to encourage their use for exercise, appreciation of resources, and as an alternative to motorized transportation.
6. Encourage development of interpretive programs in order to educate and enlighten recreational users and visitors about the magnificent and dynamic features of the Pamet Harbor system's natural and cultural history, and the impact of land activities on this system.
7. Provide visiting boaters with transient moorings available to the general public on a short-term basis.

Policies:

1. All town lands located along the waterfront shall provide public access which together provide for a range of recreational experiences.
2. Provide handicapped access to any public hiking trails and/or swimming areas established within Pamet Harbor.
3. Preserve and protect water-dependent uses and facilities along the waterfront.
4. Encourage provision of public access to Pamet Harbor by existing private uses/establishments built along the waterfront, such as the Yacht Club. (Example: canoe livery.) This policy is not meant to encourage private development for commercial uses.
5. Site public access areas away from sensitive areas and adopt environmental design standards aimed at minimizing potential impacts to water quality and marine resources.
6. Designate areas not needed for general boating navigation for non-motorized craft and other forms of user access.
7. Designate publicly-owned areas for off-road vehicle (ORV) enjoyment that do not interfere with private property, rare and endangered species habitat, land susceptible to erosion, and sensitive resources.
8. Ensure that the Harbormaster has moorings available for short term transient use.

V. Moorings

Goal: To restore the usefulness of the harbor as a safe, efficient anchorage for a diverse mix of small craft, while also guarding against unnecessary encroachment into navigational channels, commercial fishing anchorage, shellfishing areas, and other areas used for water-related recreation.

Objectives:

1. Provide secure moorings for a specified number of boats in order to provide public access to Pamet Harbor and Cape Cod Bay.
2. Establish a mooring plan related to the carrying capacity of the harbor system and which considers the need to prevent encroachment on navigational channels, to identify sensitive resources, and to protect areas used for water-related recreation, commercial fishing and shellfishing.
3. Establish funding for harbor improvements to maintain moorings.

Policies:

1. Develop a mooring plan which defines the dimensional limits for a Pamet Harbor mooring basin, maximum number of boats of varying shape, size and type, while also minimizing the total amount of space which must be devoted to moorings. (Refer to Figure 2.)
2. Assign mooring locations based on size and type of boat, instead of owner preferences.
3. Use town-owned mooring floats to the maximum extent possible in order to provide for the most efficient use of space in the mooring basin.
4. Establish mooring fees, and other harbor fees, which would be dedicated for harbor projects.
5. Encourage a launch service as an alternative to beach storage of individual boat tenders.
6. Prohibit moorings in designated shellfish beds. (Refer to Map 3.)

VI. Commercial Fishing

Goal: To sustain a limited presence of commercial fishing boats in the Pamet Harbor so as to diversify the town's economy.

Objectives:

1. Provide modest facilities and services for commercial fishing which do not diminish the harbor's natural and aesthetic resources.
2. Improve the Town's ability to detect changes in fish landings in the Pamet Harbor system and nearby Cape Cod Bay and to identify the harbor's contribution to Truro's economy.

Policies:

1. Establish a navigational channel and reserve a safe anchorage to facilitate boat loading and offloading procedures for commercial fishing.
2. Reserve limited deep water mooring space for larger commercial fishing vessels (up to 35 feet in total length) owned and operated by persons who hold a valid commercial fishing license. (See Figure 2.)
3. An unlimited number of moorings shall be permitted for small commercial fishing vessels (under 30 feet), subject to availability on the general mooring waiting list.

VII. Fiscal Management

Goal: To maintain, and where possible enhance, the Pamet Harbor system's economic value to Truro residents, including its ability to support tourism, local recreation, commercial fishing and potentially shellfishing, thereby providing jobs and income for local residents.

Objectives:

1. Provide a consistent source of funding for water quality remediation, monitoring and research necessary for restoration of the Pamet Harbor ecosystem.
2. Provide a consistent source of funding for periodic evaluation of harbor and waterfront facilities and services, as well as construction and operation of public facilities and services, where appropriate.
3. To identify and acquire non-essential harbor facilities, operations and amenities, to the greatest extent possible, through alternative means such as harbor user fees, donations, volunteerism, or private fund raising.
4. To reduce the local financial burden associated with harbor restoration and use, where possible, through seeking available sources of public funding.
5. Promote public support for harbor-related expenditures through enhanced public education.

Policies:

1. Utilize local authority to appropriate funds and/or bonds for harbor restoration and development consistent with policies expressed in this plan.
2. Establish mooring and launching fees necessary to provide funding for harbor and waterfront maintenance and enhancement, and dedicate these monies solely for harbor and waterfront use through an enterprise fund.
3. Seek donations and volunteer services.

4. Identify and pursue appropriate subsidies, such as state and federal grants, reimbursements and low-interest loans, foundation grants and charitable donations.
5. Educate residents about the economic benefits associated with restoration and enhancement of the Pamet Harbor system.

VIII. Land Use, Landscape and Visual Character

Goal: To preserve or enhance the natural sights, sounds and smells of the Pamet harborscape which contribute to Truro's rural seaside character.

Objectives:

1. Retain the seaside character of Pamet Harbor.
2. Enhance public views of the harbor from town roads.
3. Encourage use of house designs in keeping with the harbor's rural seaside character.
4. Limit noxious odors and noises in the vicinity of the harbor.

Policies:

1. Establish a Pamet River viewshed overlay district within the zoning bylaw, which protects vistas of land areas visible from the waterways and which enhances views of the harbor from public roads located around the harbor.
2. In the proposed overlay district (see #1 above), encourage architectural designs which are compatible with the landscape and which enhance views from the water, perhaps through encouraging the orientation of facades towards the harbor rather than towards the street, or else which

either impose design controls for rear facades or require screening from public view through vegetative plantings and height restrictions.

3. Either prohibit or require adequate screening for any uses/activities causing noxious odors and/or noise, or which are visually unattractive (i.e., fish cleaning stations, trash dumpsters, loud generators or machinery, etc.).
4. Utilize selective pruning in order to provide periodic public vistas along town roads of the harbor area.
5. Limit overhead lamps, spotlights, large reflective surfaces and other intrusions into ambient lighting at the harbor.
6. Acquire as much land as possible adjacent to the river and harbor, as appropriate, to preserve natural conditions.

IX. Natural Resource Protection

Goal: To protect and where possible enhance the quality and productivity of natural resources of the Pamet Harbor system, including its waters, wetlands, flora and fauna and their habitat for their own sake, as well as for sustainable human recreational and commercial use.

Objectives:

1. Establish an undisturbed vegetated buffer zone along wetlands associated with the Pamet Harbor system.
2. Limit impacts from human-related activities to wetland systems, flora and fauna, and flora and fauna habitat.
3. Preserve the ability of the Pamet Harbor system's natural resources to support recreational activities such as swimming, fishing and shellfishing, boating, and operation of off-road vehicles.

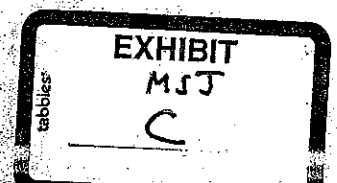
4. Improve the town's ability to detect changes in the Pamet Harbor ecosystem and to identify trends.
5. Encourage investigation of benefits (boating, shellfish, siltation and water quality) resulting from manipulation of existing culverts or dikes to allow more natural patterns of tidal flow in harbor and improved upstream drainage.

Policies:

1. Investigate benefits of adoption of a town wetlands bylaw.
2. Monitor and enforce boat speed limits in the harbor and throughout the estuary system in order to minimize erosion of beach and marsh areas.
3. Prohibit all dredging not related to maintaining a safe navigation channel and public mooring basin, unless dredging is necessary for natural resources enhancement.
4. Establish a monitoring program aimed at evaluating impacts to natural resources in Pamet Harbor, with special attention being devoted to assessment of impacts to vegetation and shellfish.
5. Encourage public acquisition and/or dedication of wetland areas for conservation in the Pamet system, particularly along its salt marsh and dunes.
6. Develop an open space management plan for all town-owned lands located along Pamet Harbor.
7. Educate harbor users and residents about the relationship and impact of boating and other upland recreational uses on natural resources in the harbor.

8. Support natural resource agencies studying upstream drainage improvements.

3. BOUNDARIES OF HARBOR PLANNING AREA



3. BOUNDARIES OF HARBOR PLANNING AREA

Pamet Harbor is located at the mouth of the four-mile long Pamet River estuary and its tributaries: Little Pamet River to the north and Mill Creek/Eagles Neck Creek to the south. A detailed physiography of the river is given in the 1987 Pamet River Greenway Management Plan (Greenway Plan) of the Truro Conservation Trust (pp. 9 - 13.)

The primary study area (Figure 1) for this Harbor Plan was selected by the Harbor Management Planning Committee in 1991 and confirmed by the consultants and a Planning Committee report of September 8, 1992:

"Beginning at a point ten (10') feet below mean low tide from the shores of Cape Cod Bay, a line going east and touching the southern edge of the Corn Hill parking lot (Sheet 45, Parcel 50), thence following said lot line to Corn Hill Road, and then going southerly and easterly along the southern side of Corn Hill Road to a parcel of land, owned by the Town of Truro, known as the "Railroad Right of Way" (Sheet 49, Parcels 17 and 18; Sheet 50, Parcels 38 and 175). Thence, southerly along the east edge of said "Railroad Right of Way" including the parcel known as the Pamet Harbor parking lot, to a point at the southeast corner of the Aubin property (Sheet 50, Parcel 175 on said "Railroad Right of Way". From said point, westerly along the southern boundary of said Aubin property to the "Toe of Great Hills" at the northeast corner of a parcel of land owned by Paul R. Waldman (Sheet 49, Parcel 25) and thence around the "Toe of Great Hills" to Great Hills Road; thence southerly along the eastern edge of Great Hills Road to the southeast corner of the Dalsheimer property (Sheet 49, Parcel 20) and westerly along the common east - west boundary of the said Dalsheimer property and the Town of Truro property (Sheet 59, Parcel 19) to the shores of Cape Cod Bay, and thence westerly to a point ten (10') feet below mean low tide; thence northerly following the ten (10') feet below low tide line to the beginning point. Sheet and

parcel numbers refer to the FY 1991 Truro Map and Ownership Volume and ownership is as stated in that volume.

The rationale for choosing these boundaries include: (1) easily identifiable; (2) they bound the area which has the greatest effect on the harbor and surrounding estuaries; (3) they bound the area that is consistent with the traditional uses of the harbor."

The planning area consists of approximately 150 acres. About 75 percent of that total consists of intertidal areas; the remainder is all within the 100-year coastal floodplain. Dune, beach, salt marsh and tidal flats comprise the majority of the sediment, with the exception of artificial fill creating the railroad bed, parking lot and boulder jetties.

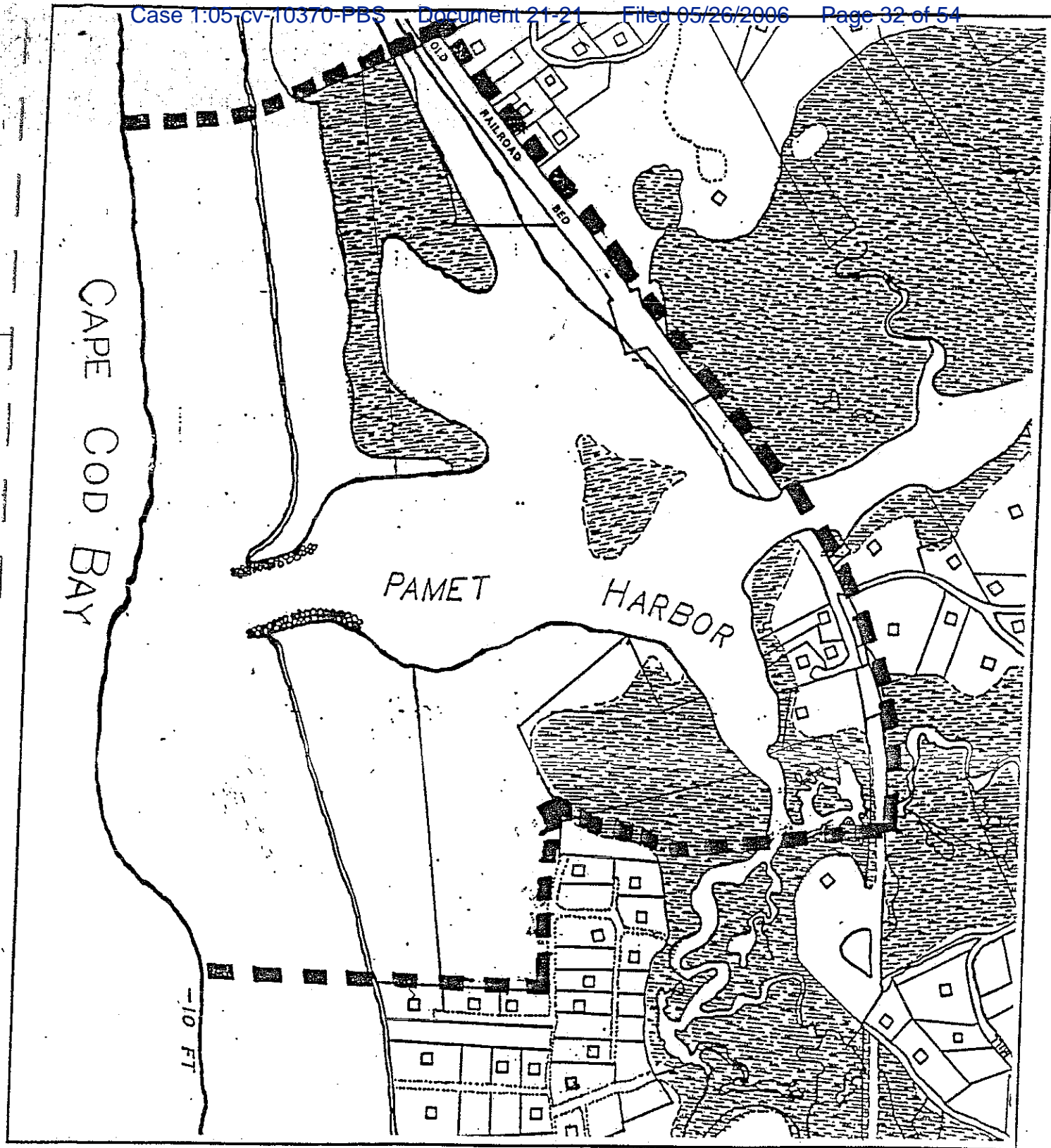


FIGURE 1.
Map Showing Boundaries of Harbor Planning Area
Pamet Harbor Management Plan

■ ■ Boundary of Harbor Planning Area

North
Not to Scale



COMMONWEALTH OF MASSACHUSETTS
EXECUTIVE OFFICE OF ENVIRONMENTAL AFFAIRS
DEPARTMENT OF ENVIRONMENTAL PROTECTION

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Secretary

LAUREN A. LISS
Commissioner

November 30, 2000

John E. Allen & Barbara Cordi-Allen
C/o William Henchy, Esquire
165 Cranberry Highway, Route 6A
Orleans, MA 02653

RE: Waterways Application No. W96-5259
Pamet Harbor, Truro, Barnstable County

Dear Sir/Madam:

Following a comprehensive review of the referenced file, the Department of Environmental Protection has denied the proposed project as detailed in the enclosed Written Determination issued pursuant to 310 CMR 9.14(2). This water-dependent project proposed the construction and maintenance of a pile-supported pier, ramp and float.

This Written Determination has a twenty-one (21) day appeal period from the date of issuance, pursuant to 310 CMR 9.17(1)(a) and 9.17(2). The process for filing an appeal is summarized in Section VI of the Written Determination.

If you have any questions on this matter, please do not hesitate to contact Mitch Ziencina at (508) 946-2734.

Sincerely,

A handwritten signature in cursive script, reading "Elizabeth A. Kouloheras".

Elizabeth A. Kouloheras, Chief
Wetlands & Waterways Program

Enc.

Cc: John Allen & Barbara Cordi-Allen, 146 Pleasantview Avenue, Longmeadow, MA 01106
Sharon Pelosi, Waterways Chief, DEP, Boston
Dorothy Montouris, Esq., DEP, OGC, Boston
Dan d'Hedouville, Esq., DEP, SERO
Office of Massachusetts Coastal Zone Management, 251 Causeway Street, Suite 900, Boston, MA 02114
Town of Truro, Board of Selectmen, P.O. Box 2030, Truro, MA 02666
Town of Truro, Harbormaster, P.O. Box 2030, Truro, MA 02666
Robert Spillane, 5 Great Hills Road, Box 1215, Truro, MA 02666
Greg Penta, ACOE, 696 Virginia Road, Concord, MA 01742-2751
Elaine E. Dee, Pamet Yacht Club, Inc., P.O. Box 555, Truro, MA 02666
Sarah A. Turano-Flores, Esq., Zisson and Veara, 828 Main Street, Box 2031, Dennis, MA 02638
Brooke Newman, 273 Roaring Fork Drive, Aspen, CO 81611

This information is available in alternate format by calling our ADA Coordinator at (617) 574-6872.

DEP on the World Wide Web: <http://www.magnet.state.ma.us/dep>

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EXHIBIT

F



COMMONWEALTH OF MASSACHUSETTS
EXECUTIVE OFFICE OF ENVIRONMENTAL AFFAIRS
DEPARTMENT OF ENVIRONMENTAL PROTECTION

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Commissioner

DIVISION OF WETLANDS AND WATERWAYS
WATERWAYS REGULATION PROGRAM

DETERMINATION FOR DENIAL OF A WATERWAYS LICENSE
FOR A WATER-DEPENDENT USE OF TIDELANDS
PURSUANT TO M.G.L. C. 91 AND 310 C.M.R. 9.00

I. PROJECT REFERENCE: John E. Allen and Barbara M. Cordi-Allen
on Flowed Tidelands
of Pamet Harbor, Truro
Waterways Application No. W96-5259

II. PROJECT DESCRIPTION: John E. Allen and Barbara M. Cordi-Allen (hereinafter the "Applicants") request authorization pursuant to M.G.L. Chapter 91 of 310 CMR 9.00 to construct and maintain a 4 foot by 134 foot pile supported pier, a 4 foot by 26 foot ramp and a 6 foot by 40 foot pile supported float system.

The Department of Environmental Protection Waterways Regulation Program (hereinafter "the Department") has jurisdiction over the proposed project because it constitutes new construction on flowed private and Commonwealth tidelands of Pamet Harbor.

III. DEPARTMENT'S DETERMINATION OF WATER DEPENDENCY: The Department determined that the use of flowed private and Commonwealth tidelands within Pamet Harbor for the non-commercial berthing of recreational vessels is a water-dependent use pursuant to 310 CMR 9.12(2). Therefore, the application was processed as a water-dependent use project.

IV. DEPARTMENT'S SUMMARY

A) Chapter 91 Licensing History

The Department's historical plans and Chapter 91 Waterways licensing records show that the site consists of flowed private and Commonwealth tidelands on which one license was previously issued. Authorization for the construction and maintenance of a 4 foot by 80 foot pile supported pier with ramp and float system was granted by the Department of Public Works (DPW) License Number 4304 on April 18, 1960. The Applicants originally requested authorization to rebuild the pier authorized by License No. 4304. The Department required a revised application since the present proposal is a modification of the pier authorized by License No. 4304 and the licensed structure was abandoned for greater than five years.¹ The proposed pier is for private use associated with a single residential unit.

Other permits within Pamet Harbor are identified because of their relevance to this project. Two other piers are located within Pamet Harbor; community piers located at the public boat ramp and at the Pamet Harbor Yacht Club. The boat

¹ See affidavit(s) attached to a letter from the Town of Truro to the Army Corps of Engineers dated April 26, 1997.
This information is available in alternate format by calling our ADA Coordinator at (617) 574-6872.



Waterways Application No. W90-5259

Written Determination

Page 2 of 6

ramp pier license (DEP No. 5014) authorized the Town of Truro to construct a 145-foot long pier with 91-foot ramp and float system. The Pamet Harbor Yacht Club License (DEP No. 4748) authorized maintenance of a 30 foot fixed pier, 14 foot ramp and 48 foot long float system, of which 48 feet are beyond the mean high water shoreline. The Department of Environmental Management has managed three dredge contracts in Pamet Harbor since 1965 to maintain the entrance channel and mooring basin. The most recent dredging activity was authorized by DEM Contract No. 3275 in 1996 and DEP Permit No. 285 issued in 1994. Pre and post dredge surveys are included in the application file for reference. The location of the mooring basin is identified on the plans for this application.

B) MEPA Review

The proposed project does not meet the threshold for review under the Massachusetts Environmental Policy Act (MEPA).

C) Public Notice and Hearing

The Department sent notice to the Applicants in accordance with 9.13(1)(a). The first notice was published in The Cape Codder, on November 15, 1996. In a letter dated November 26, 1996, the Town of Truro requested the Department conduct a public hearing on the application pursuant to 9.13(3)(a). At the request of the Applicants, the public hearing was postponed until a notice was published on August 12, 1998 in the Cape Cod Times for a hearing scheduled for August 12, 1998 at the Truro Central School. At the start of the public hearing, representatives of the Town of Truro and Pamet Harbor Yacht Club objected to what they considered an insufficient notification period. It was mutually agreed upon to postpone the public hearing until August 26, 1998. The August 26th meeting was noticed in the Cape Codder on August 17, 1998 and held at 6:00 P.M. in the Public Safety Building on Route 6 in Truro.

The August 26th public hearing was attended by at least 80 persons including the Applicants, members of the Truro Board of Selectmen, Harbormaster, Conservation Commission, Planning Board, Pamet Harbor Commission, Town Counsel, Town Administrator, abutters, mooring permittees, members of the public, and representatives of the Army Corps of Engineers and the Department. After a brief introduction by the Department, Attorney William Henchy made a short presentation describing the proposed pier as 30 feet longer than what existed at the site in the 1972 according to an aerial photo of the Harbor provided by the US Army Corps of Engineers (see Exhibit). In the photo, an orange buoy delineated the approximate location of the previously authorized structure. The additional length is requested for handicapped access in all tide conditions given the shallow harbor conditions. No lights are proposed on the pier. In his presentation, Mr. Henchy stated there are no buoys marking an established course of vessels and the crowded harbor conditions are due to the excessive number of mooring permits (130) issued by the Harbormaster. He questioned whether the right of access to a waterbody belongs to the littoral property owner or the mooring holders.

At the close of the presentation, the Department received oral testimony from those present who wished to speak. Oral comments were received from the Town Counsel (representing the Board of Selectmen and Town Administrator), the Planning Board, members of the Pamet Harbor Commission including those that authored the Harbor Management Plan, affected mooring holders, both direct abutters, and a relative of the former licensee, Diana Worthington. All spoke in opposition of the project as proposed because of its "excessive length" and associated impacts to navigational safety, displacement of moorings (some of which are held by commercial fisherman) and rerouting of the established routes to and from the Pamet Harbor Yacht Club pier and some moorings. A few stated that they would support a pier that was no longer than that previously authorized as illustrated by the orange buoy. Aesthetic concerns and the private pier being out of character with the harbor were also common themes. The Pamet Harbor Yacht Club stated that for over 35 years their members have never had full access to the Harbor in all tides in order to accommodate navigation needs of the other harbor users. Various mooring holders and Diana Worthington iterated that the harbor conditions limit full tidal access.

The Harbormaster provided clarification on the number of moorings in this section of the harbor and the number of boats that would have to be moved to accommodate the proposed project. As Mr. Henchy stated there are 130 vessels permitted at moorings in Pamet Harbor as well as a waiting list of 83. However, only 68 boats on 34 moorings are placed in this section of the Harbor. Of those, 16 can't use their permitted moorings because they are on tidal flats. So effectively 52 boats are moored on 26 moorings in this section of the Harbor. The proposed project would physically displace 2 moorings (4 boats) that could be moved north of the public boat ramp, on tidal flats at the mouth of the Pamet River. As many as 5 moorings (10 boats) might need to be displaced to provide safe access to and from the pier, which the Harbormaster notes is about 20% of the boats in this section of the harbor. It is noteworthy, that there has not been

Waterways Application No. W96-5259
 Written Determination
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an increase in the number of moorings over time and the Harbor Management Plan specifically permits the same number of moorings be maintained so no commercial fisherman or other long-term permit holders be displaced.

During the comment periods a total of 56 letters were received from town officials, abutters, mooring permittees, and interested citizens, see Attachment 1. The comments are categorized by the following nine potential impacts of the proposed pier on the use or natural resources of Pamet Harbor. The potential impacts identified in public comments include the following: 1) hazard to navigation; 2) alters established course of vessels; 3) interferes with access to abutting properties; 4) interferes with public's right to navigation; 5) interferes with public's right of access; 6) displaces moorings, an existing water-dependent use; 7) impacts saltmarsh and shellfish; 8) requests for alternative use of community pier at boat ramp; 9) intended use of pier for commercial purposes. Petitions to Intervene in this application were received from the Town of Truro represented by Town Counsel Edward Veara, Pamet Harbor Yacht Club, an informal citizen group and 15 persons with moorings in Pamet Harbor.

In partial response to the public comment, the applicant submitted revised plans. The modifications are described in a letter from Attorney W. Henchy dated May 25, 1999 in the following manner. The length of the pier was shortened so the seaward edge of the float extends no farther than Extreme Low Water, the "Tee" float system was reduced in length from 80 feet to 40 feet, and the pier does not encroach within 25 feet of the property line extensions. The Department's summary response to the comments is described in Section V below.

A full record of the public hearing as well as the exhibits and written comments are in the application file.

D) Other Approvals

The Truro Conservation Commission issued an Order of Conditions for the proposed project that was appealed to the Department. The Department issued a Superseding Order of Conditions on June 8, 2000. (DEP File Number SE75-459). The Superseding Order of Conditions was subsequently appealed to the Department's Office of Administrative Appeals.

V. DEPARTMENT'S DETERMINATION PURSUANT TO CHAPTER 91

The Department has determined that this project does not serve a proper public purpose which provides greater benefit than detriment to the public's rights in tidelands as specified in 310 CMR 9.31 because it does not meet the standards for preserving water-dependent public rights as required by 310 CMR 9.35; does not meet the standards for protecting water dependent uses as required by 310 CMR 9.36; and does not conform to the standards for private recreational boating facilities as required by 310 CMR 9.38(2). Therefore, the project is denied pursuant to the specified sections of 310 CMR 9.00.

Pursuant to 310 CMR 9.31(2), no license or permit shall be issued by the Department for any project on tidelands except for water-dependent use projects located entirely on private tidelands, unless the project serves a proper public purpose which provides greater benefit than detriment to the rights of the public in said lands. Water-dependent projects are presumed to meet the proper public purpose requirement, however, the presumption may be rebutted if the project does not conform to the basic licensing requirements listed at 310 CMR 9.31(1).

310 CMR 9.31(1)(d) requires compliance with the standards governing water-related public rights enumerated at 310 CMR 9.35. Specifically, pursuant to 310 CMR 9.35(2)(a), - the project shall not significantly interfere with the public rights of navigation which exist in all waterways. Such rights include the right to conduct any activity which entails the movement of boats, vessel, floats, or other watercraft; the right to conduct any activity involving the transport or the loading/unloading of persons or objects to or from any such watercraft; and the natural derivatives thereof.

Pursuant to 310 CMR 9.35(2)(a) 1, the Department shall find that the standard is not met in the event the project will:

- extend into or over any existing channel such as to impede free passage;
- require the alteration of an established course of vessels;
- interfere with access to adjoining areas by extending substantially beyond the projection of existing structures adjacent to the site;
- generate water-borne traffic that would substantially interfere with other water-borne traffic in the area at present, or in the future as may be evidenced by documented projections;

Waterways Application No. W96-5259
 Written Determination
 Page 4 of 6

- adversely affect the depth or width of an existing channel;
- or impair in any other substantial manner the ability of the public to pass freely upon the waterways and to
- engage in transport or loading or unloading activities.

Based on the Department's review of the application material and the site, the testimony provided at public hearing, and the public comments received, the Department finds that the project as proposed would significantly interfere with public rights of navigation in Pamet Harbor. The project site is located in Pamet Harbor, the only saltwater access in Truro. It is a small, congested harbor that silts in regularly. The entrance and mooring basin have been dredged three times since 1965. Although last dredged in 1996, several boats at the moorings and the Pamet Harbor Yacht Club floats are dry at low water. Some previously designated mooring locations are no longer useable because of the siltation. The Town supports a public boat ramp and provides over 130 moorings for commercial fisherman and recreational boaters in a defined mooring basin with a waiting list of 83. In this section of the Harbor there are effectively 52 boats at 26 moorings. At least 2 and possibly as many as 6 vessels would have to be moved to accommodate the pier's physical presence as well as safe access to and from the proposed pier, and the yacht club's pier. The Applicant's property is one of 3 residential lots located between the public access ramp and the yacht club. The remainder of the Harbor's shoreline is undeveloped, with the principal landowner being the Truro Conservation Trust (see their letter in the public record). A channel or regular course of vessels is not marked, presumably because of the shifting sands, but has been identified by the Harbormaster and others familiar with the Harbor as along the edge of the mooring basin limit described in DEM Contract No. 3275 and located on the applicants plan. Specifically, the project as designed will impede or otherwise impair free passage and alter an established course of vessels within this channel, and may interfere with access to adjoining properties.

Pursuant to 310 CMR 9.36(3), - the project shall not significantly disrupt any water-dependent use in operation, as of the date of license application, at an off-site location within the proximate vicinity of the project site. If significant disruption occurs, the project shall include such mitigation and/or compensation measures as the Department deems appropriate to avoid such disruption. The project as proposed is as long or longer than the two other piers in the Harbor, both of which are community piers, and, as discussed above, will require between 2 and 5 moorings to be moved to tidal flats that have limited access. Accordingly, the Department finds that the project as proposed disrupts navigational access to water-dependent uses in operation prior to the date of the license application, in the immediate vicinity of the project.

Pursuant to 310 CMR 9.38(2)(b), no project shall include a private recreational boating facility with fewer than ten berths on Commonwealth tidelands or a Great Pond, if the Department receives written certification from the municipal official or planning board of the municipality in which the project is located that such facility does not conform to a formal, areawide policy or plan which establishes municipal priorities among competing uses of the waterways, unless the Department determines that such certification:

- is arbitrary and capricious, or an abuse of discretion; or
- conflicts with an overriding state, regional, or federal interest.

As a pier designed for private use associated with a single-family residential unit, the project constitutes a private recreational boating facility as defined at 310 CMR 9.02. The Town of Truro has adopted a Harbor Management Plan for Pamet Harbor, with assistance from MCZM which addresses impacts associated with docks and piers. The Plan was prepared by Horsley & Witten Inc. on behalf of the Harbor Management Committee, was finalized in June 1994 and was unanimously adopted by the Board of Selectmen on July 12, 1994. The Plan was developed in a public forum with public meetings and public comment throughout its development. The Plan applies to the entire geographic area of Pamet Harbor, encompassing approximately 150 acres, of which approximately 75% consist of intertidal areas. The Plan identifies several competing uses of Pamet Harbor including commercial and recreational vessels, improvements to navigation, establishment and maintenance of mooring areas, public access, shell fishing and natural resource protection and has established priorities among them. The Town has certified to the Department that the project as proposed does not conform to the Plan. The plan restricts the locations of moorings and docks/piers to prevent encroachment into navigational channels, establishes a navigational channel and reserves areas for safe anchorage to facilitate loading/offloading for commercial fishing vessels, and provides anchorage for a diverse mix of small craft. The Department finds that the Harbor Management Plan constitutes a formal area wide policy or plan establishing Town priorities among the competing uses of Pamet Harbor, and, furthermore, finds no evidence that the Plan is arbitrary, capricious or an abuse of discretion, or conflicts with any overriding state, regional or federal interest. Based on this

Waterways Application No. W96-5259

Written Determination

Page 5 of 6

evaluation, the Department is required to deny the project pursuant to 310 CMR 9.38(2)(b) because the project does not conform to the Town's Harbor Management Plan.

In summary, this project as proposed will detrimentally impact navigational safety, public rights of navigation, public access and competing water-dependent uses within Pamet Harbor.

On the basis of the foregoing analysis, the Department denies granting of a Waterways license for the uses and structure described above and delineated on the application plans. This denial is made without prejudice, therefore, the Applicant may resubmit a new application in accordance with 310 CMR 9.00.

VI. NOTICE OF APPEAL RIGHTS:

A) Appeal Rights and Time Limits

The following persons shall have the right to an adjudicatory hearing concerning this decision by the Department to grant or deny a license or permit: (a) an applicant who has demonstrated property rights in the lands in question, or which is a public agency; (b) any person aggrieved by the decision of the Department to grant a license or permit who has submitted written comments within the public comment period; (c) ten (10) residents of the Commonwealth, pursuant to M.G.L.c.30A, s.10A, who has submitted written comments within the public comment period; (e) CZM, for any project in the coastal zone, if it has filed a notice of participation within the public comment period; and (f) DEM, for any project in an Ocean Sanctuary, if it has filed a notice of participation within the public comment period. To request an adjudicatory hearing, a Notice of Claim must be made in writing and sent by certified mail or hand delivery to the Department with the appropriate filing fee specified within 310 CMR 4.10 along with a DEP Fee Transmittal Form, within twenty-one (21) days of the date of issuance of this decision and addressed to:

Docket Clerk
Office of Administrative Appeals
Department of Environmental Protection
One Winter Street, 3rd Floor
Boston, MA 02108

A copy of the Notice of Claim must be sent at the same time by certified mail or hand delivery to the applicant, (where applicable) the municipal official of the city or town where the project is located, and the issuing office of DEP at:

Department of Environmental Protection
Wetlands and Waterways Program
20 Riverside Drive
Lakeville, MA 02347

B) Contents of Hearing Request

Under 310 CMR 1.01(6)(b), the Notice of Claim must state clearly the facts that are the ground for the request, and relief sought. Additionally, the request must state why the decision is not consistent with applicable laws and regulations.

Pursuant to 310 CMR 9.17(3), any notice of claim for an adjudicatory hearing must include the following information:

- (a) the DEP Waterways Application File Number;
- (b) the complete name, address, fax number, and telephone number of the applicant;
- (c) the address of the project;
- (d) the complete name, address, fax number and telephone number of the party filing the request and, if represented by counsel, the name, address, fax number and telephone number of the attorney;
- (e) if claiming to be a person aggrieved, the specific facts that demonstrate that the party satisfies the definition of "aggrieved person" found in section 9.02;
- (f) a clear statement that a formal adjudicatory hearing is being requested;
- (g) a clear statement of the facts which are the grounds for the proceedings, the specific objections to the Department's written decision, and the relief sought through the adjudicatory hearing, including specifically the changes desired in the final written decision; and

Waterways Application No. W96-5259
Written Determination
Page 6 of 6

- (h) a statement that a copy of the request has been sent to: the applicant and the municipal official of the city or town where the project is located.

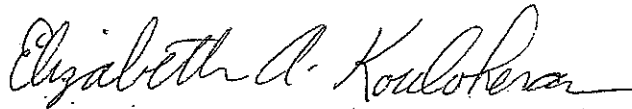
C) Filing Fee and Address

A copy of the Notice of Claim along with a DEP Fee Transmittal Form and a valid check payable to the Commonwealth of Massachusetts in the amount of one hundred dollars (\$100) must be mailed to:

Commonwealth of Massachusetts
Department of Environmental Protection
PO Box 4062
Boston, Mass. 02211

The Request will be dismissed if the filing fee is not paid, unless the appellant is exempt or is granted a wavier. The filing fee is not required if the appellant is a city or town (or municipal agency), county, or district of the Commonwealth, or a municipal housing authority. The Department may waive the adjudicatory hearing filing fee pursuant to 310 CMR 4.06(2) for a who shows that paying a fee will create an undue financial hardship. A person seeking a wavier must file an affidavit setting forth the facts believed to support the claim of undue financial hardship together with the hearing request as provide above.

THIS DETERMINATION IS ISSUED BY THE DEPARTMENT OF ENVIRONMENTAL PROTECTION ON THE
30th DAY OF November, 2000.



Elizabeth A. Kouloheras, Chief
Wetlands and Waterways Programs

Bk 14827 Ps226 #15076
02-15-2002 @ 01:30p

COMMONWEALTH OF MASSACHUSETTS

Barnstable, ss.

Office of the Board of Selectmen
For the Town of Truro

**ORDER OF TAKING BY EMINENT DOMAIN
OF LAND IN TRURO, BARNSTABLE COUNTY**

BY

THE BOARD OF SELECTMEN OF THE TOWN OF TRURO

FOR

**THE PRESERVATION OF CERTAIN LAND IN TRURO
FOR HARBOR MANAGEMENT AND OTHER
PUBLIC PURPOSES**

We, Sally Sears-Mack, Suzanne Grout-Thomas, Lloyd Rose, Robert Martin, and Harold Eastman, the duly elected and qualified Selectmen of the Town of Truro, a municipal corporation duly situated in the County of Barnstable and Commonwealth of Massachusetts, acting under the authority of the Vote taken at the Special Town Meeting, held on January 29, 2002, which vote was taken pursuant to Article 2 of the Warrant for said Town Meeting and, further, under the authority conferred on us by General Laws, Chapter 79 and Acts in amendment thereof and in addition thereto, and by virtue of every other power conferred on us by law, having duly complied with all the preliminary requirements prescribed by law, do hereby **ADOPT AND DECREE** this Order of Taking and do hereby **TAKE** by Eminent Domain as set forth above, on behalf of said Town of Truro, a FEE SIMPLE interest, for the purpose of OPEN SPACE and HARBOR PRESERVATION AND MANAGEMENT and for OTHER PUBLIC PURPOSES, in parcels of land depicted a plan of land entitled "Plan of Land at Pamet Harbor, Truro, Made for the Town of Truro, Scale 1" = 100', May 22, 2000, Slade Associates, Inc., Registered Land Surveyors, Rte 6 & Pine Point Road, Wellfleet,

EXHIBIT

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Bk 14827 Ps227 #15076

Massachusetts, 02667," which plan is recorded in the Barnstable County Registry of Deeds in Plan Book 571, Page 66, and more particularly described in Schedules "A" through "D," which Schedules are attached hereto and incorporated herein by reference, and which set forth the descriptions of the parcels, the owners of record, all title references, the approximate acreages, and the amounts of the awards.

This fee simple interest in the parcels of land described in Schedules "A" and "B," taken by the Town via this instrument of taking shall not include the rights of the owners of the upland parcels abutting the parcels described in Schedules "A" and "B," and their successors and assigns, to continue to maintain, repair and utilize the existing piers located on these parcels to their existing extent and in their existing locations for all purposes for which the piers have been used from the time of their installation until the date of this instrument of taking. The easement rights retained herein shall be perpetual and shall be considered appurtenant rights that run respectively with the title to the upland parcels directly abutting the parcels described in Schedules "A" and "B," which upland parcels are not the subject of this taking and are further described on the Plan of Land referenced in the Schedules as, "Sh. 50, Pcl. 37, Pamet Harbor Yacht Club, Inc., Book 1,100, Pg. 148," and "Sh. 50, Pcl. 21, John E. Allen and Barbara Cordi-Allen, Bk. 10,111, Pg. 256," respectively. The locations of the land area over which these easement rights are retained are depicted on the Plan of Land referenced in the Schedules and each labeled "Pier Easement" on said plan. The easement rights retained herein do not include the right to alter the existing piers in any manner that would extend the piers beyond their footprints, as those footprints exist on the

Bk 14827 Pg 228 #15076

ground as of the date of this taking and are shown to exist on the Plan of Land referenced in the Schedules.

With the exception of the above-described piers, there are no other trees, buildings, or structures located on the land described in each of said Schedules that are included in this Order of Taking. No betterments are to be assessed in connection with this Order of Taking. The owners of record of the land described in said Schedules shall retain no rights or interest in this property, save for the easement rights expressly reserved herein.

All awards shall be reduced by amounts necessary to pay any and all outstanding real estate taxes payable to the Town of Truro as of the date of the recording of this instrument of taking, including interest, demand fees, and other costs of collection.

See the certified copy of the Vote of the Town of Truro authorizing this taking attached hereto.

Bk 14827 Pg 229 #15074

IN WITNESS WHEREOF, we the undersigned, duly authorized Selectmen of the
Town of Truro, have adopted and decreed this Order of Taking, this 6th Day of February 2002.

BOARD OF SELECTMEN,
TOWN OF TRURO,

By: Sally Sears-Mack
Sally Sears-Mack
Chair, Board of Selectmen

COMMONWEALTH OF MASSACHUSETTS

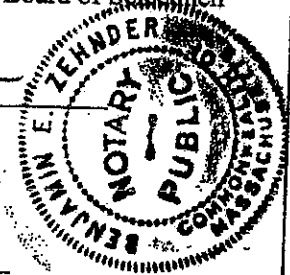
Barnstable, ss.

Feb. 6, 2002

Then personally appeared before me the above-named Sally Sears-Mack, and
acknowledged the foregoing instrument to be the free act and deed of the Board of Selectmen
for the Town of Truro.

Benjamin E. Zehnder, Esq.
My Commission Expires
October 31, 2004

[Signature]
Notary Public
My Commission Expires:



By: Lloyd F. Rose
Lloyd Rose

By: Suzanne Grout-Thomas
Suzanne Grout-Thomas

By: Robert Martin
Robert Martin

By: Harold Eastman
Harold Eastman

Bk 14827 Pg 230 #15076

Schedule "A"

Description: A certain parcel of real property in the Town of Truro, Barnstable County, Massachusetts, consisting of the tidelands portion of the parcel shown on Truro Assessor's Map 50 as Lot 37, and shown as **Parcel 3** on the plan of land first referenced in the Order of Taking, the title to which is duly recorded in the Barnstable County Registry of Deeds in Book 1100, Page 148.

Record Owner: Pamet Harbor Yacht Club, Inc.

Acreage: 1.08 acres, more or less

Award: Five Thousand (\$5,000.00) Dollars

Bk 14827 Pg 231 #15076

Schedule "B"**Description:**

A certain parcel of real property in the Town of Truro, Barnstable County, Massachusetts, consisting of the tidelands portion of the parcel shown on Truro Assessor's Map 50 as Lot 21, which property is also shown as **Parcel 4** on the plan of land first referenced in the Order of Taking, the title to which is duly recorded in the Barnstable County Registry of Deeds in Book 10,111, Page 256.

Record Owner:

John Allen and Barbara Cordi-Allen

Acreage:

.56 acres, more or less

Award:

Two Thousand, Five Hundred (\$2,500.00) Dollars

Bk 14827 Ps232 #15076**Schedule "C"****Description:**

A certain parcel of real property in the Town of Truro, Barnstable County, Massachusetts, consisting of the tidelands portion of the parcel shown on Truro Assessor's Map 50 as Lot 20, which property is also shown as **Parcel 5** on the plan of land first referenced in the Order of Taking, the title to which is duly recorded in the Barnstable County Registry of Deeds in Book 11,175, Page 326.

Record Owner:

Brooke Newman

Acreage:

.18 acres, more or less

Award:

Twenty-Nine Thousand (\$29,000.00) Dollars

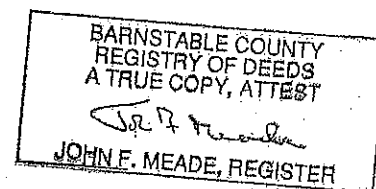
Bk 14827 P-232 #15076
ASchedule "D"

Description: A certain parcel of real property in the Town of Truro, Barnstable County, Massachusetts, consisting of the tidelands portion of the parcel shown on Truro Assessor's Map 50 as Lot 19, which property is also shown as **Parcel 6** on the plan of land first referenced in the Order of Taking, the title to which is duly recorded in the Barnstable County Registry of Deeds in Book 12,802, Page 320.

Record Owner: Sarah Landis

Acreage: .24 acres, more or less

Award: Twenty Thousand (\$20,000.00) Dollars



OFFICE OF
TOWN CLERK
TREASURER - COLLECTOR OF TAXES
TOWN OF TRURO, MA 02666-2012

SPECIAL TOWN MEETING, JANUARY 29, 2002

ARTICLE 2. PAMET HARBOR EMINENT DOMAIN TAKING Voted: (as moved) to authorize the Board of Selectmen to acquire by gift an easement interest in the so-called "tidelands" or "flats" portions of the following parcels of property, being the area lying between the mean high tide line and the extreme low tide line of said parcels, which parcels are designated on the Truro Assessor's Map 49 as Lots 21, 32, and 37, and which are also identified as Lots 1a, 2a and 2b on a plan of land entitled "Plan of Land at Pamet Harbor, Truro, Made for the Town of Truro," dated March 22, 2001, as revised through January 10, 2002, and prepared by Slade Associates, Inc., Registered Land Surveyors, a copy of which is available for inspection at the office of the Truro Town Clerk; which tidelands consist of approximately 3.76 acres, more or less; to see if the Town will vote to authorize the Board of Selectmen to acquire by the exercise of eminent domain powers under Massachusetts General Laws, Chapter 79, or any other enabling authority, fee simple interests in the so-called "tidelands" or "flats" portions of the following parcels of property, being the area lying between the mean high tide line and the extreme low tide line of said parcels, which parcels are designated on the Truro Assessor's Map 50 as Lots 19, 20, 21 and 37, and which are also identified as Lots 3, 4, 5 and 6 on the afore-mentioned plan, which tidelands consist of approximately 2.06 acres, more or less; to acquire this land for the purpose of harbor management and preservation; to commit this land to the care, custody, control and management of the Board of Selectmen; to appropriate Sixty-Six Thousand, Five Hundred (\$66,500.00) Dollars for the purpose of acquiring the fee simple interests in said Lots 3, 4, 5 and 6 and other costs incidental and related thereto, including the payment of damage awards arising from the eminent domain taking, payment of tax awards, and legal fees; in order to meet this appropriation, to transfer Seven Thousand Five Hundred (\$7,500.00) Dollars from the Pamet Harbor Receipts reserved for appropriation for purposes of paying the damage awards; and to expend Forty-Nine Thousand (\$49,000.00) Dollars from the Land Bank Fund containing monies collected in accordance with Chapter No. 293 of the Acts of 1998, also known as an Act Relative to the Establishment of the Cape Cod Open Space Land Acquisition Program for purposes of paying damage awards; and to expend Ten Thousand (\$10,000.00) Dollars from said Land Bank Fund for the payment of tax awards, legal fees and other costs incidental and related thereto; to authorize the Board of Selectmen to apply for, accept and expend any funds which may be provided by the Commonwealth or some other source to defray a portion or all of the costs of acquiring this property.

So voted: standing vote 138 YES, 2 NO.

So certified:

Cynthia A. Slade
Town Clerk, Town of Truro
March 10, 2002

Bk 15338 Pg 143 #58485
07-05-2002 @ 11:19a

DEED OF EASEMENT

Robert Bednarek, Judith Benedict, Betsey A. Brown, Ansel B. Chaplin, Carol P. Green, David Kuechle, John Marksbury, John H. Snow, Richard Whalen, and Pamela Wolff, Trustees of the TRURO CONSERVATION TRUST, established under an Agreement and Declaration of Trust dated 30 November 1981 and recorded in the Barnstable County Registry of Deeds in Book 3428, Page 196, as amended, with offices located at One Pine Ridge Road East, North Truro, Massachusetts, and having a mailing address of Post Office Box 327, North Truro, Massachusetts 02652, their successors and permitted assigns ("Grantor")

for nominal consideration and as a gift,

grant to the TOWN OF TRURO, a municipal corporation duly organized under the laws of the Commonwealth of Massachusetts, with offices at 24 Town Hall Road, Truro, Massachusetts and having a mailing address of Post Office Box 2030, Truro, Massachusetts, 02666, acting by and through its Board of Selectmen, its successors and permitted assigns ("Grantee"),

IN PERPETUITY, the following described EASEMENT IN GROSS in and over the so-called "tidelands" or "flats" portions of certain parcels of land abutting the waters of Pamet Harbor in Truro, Barnstable County, Massachusetts, which portions are identified as Parcels 1A, 2A and 2B on a plan of land entitled "Plan of Land at Pamet Harbor, Truro, Made for the Town of Truro," dated March 22, 2001 and last revised June 24, 2002, and prepared by Slade Associates, Inc., Registered Land Surveyors, which plan is recorded at the Barnstable County Registry of Deeds in Plan Book 574, Page 75, and which consist of approximately 3.76 acres, more or less. For Grantor's title in Parcel 1A, see Deeds recorded in said Registry in Deed Book 4070, Page 3, Book 4038, Page 289, Book 4036, Page 21, Book 4442, Page 223; for Grantor's title in Parcel 2A, see Deed recorded in said Registry in Deed Book 3553, Page 223; for Grantor's title in Parcel 2B, see Deed recorded in said Registry in Deed Book 9729, Page 26. For Grantee's Authority to accept this gift of Easement, see the Certified copy of the Vote of the Town recorded in said Registry in Deed Book 15036, Page 146.

Said EASEMENT shall include the following rights and interests in and over said parcels of land:

- i) the right to install, maintain, regulate and license a total of no more than forty-five (45) moorings at any given time for use and rental by members of the public in and over the Easement area in substantially the locations shown on the Plan of Land first referenced above;
- ii) the right to promote the growth of the shellfish population in and over the Easement area through seeding and other growth propagation programs;
- iii) the right to promote shellfishing through the issuance of licenses for fishing in and over the Easement area in accordance with the Town of Truro shellfishing regulations, as may be amended from time to time; and

This property has no street address
Truro, MA

EXHIBIT

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Bk 15338 Pg144 #58685

iv) all other rights necessary to promote the goals, objectives and policies of the Pamet Harbor Management Plan, which goals and objectives include, but are not limited to, the promotion of navigation and harbor safety and the protection of water quality, shellfish and other natural resources.

This Easement is not to be construed as representing the existence or nonexistence of any pre-existing rights of the public, if any, in and to the Easement area, and any such preexisting rights of the public, including the rights of the public to fish, fowl and navigate over the Easement area in accordance with the so-called "Public Trust Doctrine," the common law doctrine codified in the Commonwealth of Massachusetts by the Colonial Ordinances of 1641 through 1647, including the right of the Grantee or any public agency, to conduct dredging for navigation purposes in and over the Easement area in accordance with all local, county, state and federal approvals, licenses and permits issued for that purpose, are not affected by the granting of this Easement.

The limitation as to the location and number of moorings are both of the essence, and the location of said moorings shall not be substantially changed, nor their number increased, under any circumstances without the express written consent of the Grantor duly recorded in said Registry, which consent may be withheld for any reason deemed sufficient by the Grantor. Any substantial change of location or increase in the number of moorings without said consent shall constitute a violation of this Easement, enforceable by the Grantor through any available remedy at law or in equity.

Witness our hands and seal this ^{25th} Day of June, 2002.

Robert Bednarek
Robert Bednarek

David Keuchle
David Keuchle

Judith Benedict

Betsey A. Brown
Betsey A. Brown

Ansel B. Chaplin
Ansel B. Chaplin

Carol P. Green
Carol P. Green

John H. Snow

John H. Snow
John H. Snow

Richard Whalen
Richard Whalen

Pamela Wolff

Bk 15338 Pg 145 #58685

COMMONWEALTH OF MASSACHUSETTS

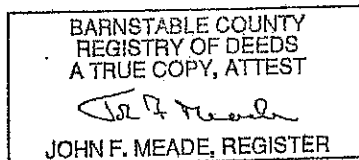
Barnstable, ss.

June 28 2002

Then personally appeared before me the above-named Ansel B. Chaplin, acting as Secretary of the Truro Conservation Trust, and acknowledged the foregoing instrument to be the free act and deed of the Trustees of the Truro Conservation Trust, before me,

Robert P. Kelly
Notary Public *ROBERT P. KELLY*
My Commission Expires:

4.18.08



BARNSTABLE REGISTRY OF DEEDS

RELEASE/REQUEST FOR PAYMENT OF DAMAGES

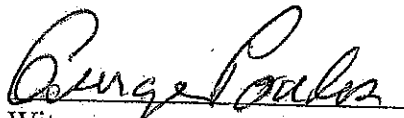
TO: Board of Selectmen of the Town of Truro
c/o Edward E. Veara, Esquire
Zisson and Veara
828 Main Street; P.O. Box 2031
Dennis, Massachusetts 02638

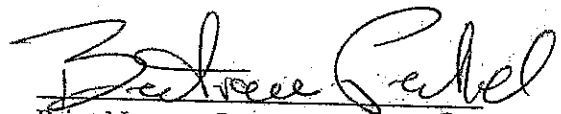
FROM: Pamet Harbor Yacht Club, Inc.
P.O. Box 555
Truro, Massachusetts 02666

RE: Land in Truro, Barnstable County, Massachusetts
Parcel 3 on a plan of land entitled "Plan of Land at Pamet Harbor, Truro,
Made for the Town of Truro, Scale 1" = 100', May 22, 2000, Slade Associates,
Inc., Registered Land Surveyors, Rte 6 & Pine Point Road, Wellfleet,
Massachusetts, 02667," which plan is recorded in the Barnstable County
Registry of Deeds in Plan Book 571, Page 66, and more particularly described
in **Schedule "A"** of the Order of Taking for the above-referenced parcel,
which Order was recorded with the Barnstable County Registry of Deeds on
February 15, 2002 at Book 14827, Page 266.

Ladies and Gentlemen:

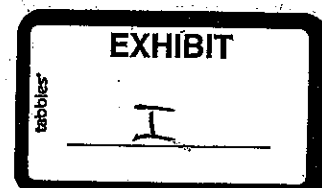
I hereby accept, pursuant to Massachusetts General Laws, Chapter 79, Section 39, on behalf of the Pamet Harbor Yacht Club, Inc., the offer of payment in the amount of **Five Thousand (\$5,000.00) Dollars**, as adopted by the Board of Selectmen in the Order of Taking on February 6, 2002, as **settlement in full** of Pamet Harbor Yacht Club Inc.'s claims for damages resulting from the eminent domain taking of the above-referenced parcel, hereby waive the corporation's right to seek further damages from the Town, which right could be exercised by filing a civil action in the Superior Court within three years from the date of the recording of Order of Taking, and hereby certify that I am authorized to sign this Release on behalf of said corporation, as indicated in the attached attested copy of the vote of the directors of the corporation.


Witness
Name: **GEORGE POULOS**


Print Name: **BERTRAM PERMEL**
President of Pamet Harbor Yacht Club, Inc.

Dated: 7/20/02

Article 2, Special Town Meeting, January 29, 2002.



RELEASE/REQUEST FOR PAYMENT OF DAMAGES

TO: Board of Selectmen of the Town of Truro
c/o Edward E. Veara, Esquire
Zisson and Veara
828 Main Street; P.O. Box 2031
Dennis, Massachusetts 02638

FROM: Brooke Newman
273 Roaring Fork Drive
Aspen, Colorado 81611

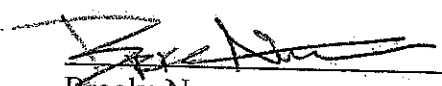
RE: Land in Truro, Barnstable County, Massachusetts
Parcel 5 on a plan of land entitled "Plan of Land at Pamet Harbor, Truro,
Made for the Town of Truro, Scale 1" = 100', May 22, 2000, Slade Associates,
Inc., Registered Land Surveyors, Rte 6 & Pine Point Road, Wellfleet,
Massachusetts, 02667," which plan is recorded in the Barnstable County
Registry of Deeds in Plan Book 571, Page 66, and more particularly described
in **Schedule "C"** of the Order of Taking for the above-referenced parcel,
which Order was recorded with the Barnstable County Registry of Deeds on
February 15, 2002 at Book 14827, Page 226.

Ladies and Gentlemen:

I hereby accept, pursuant to Massachusetts General Laws, Chapter 79, Section 39, the offer of payment in the amount of **Twenty-Nine Thousand (\$29,000.00) Dollars**, as adopted by the Board of Selectmen in the Order of Taking on February 6, 2002, as **settlement in full** of my claims for damages resulting from the eminent domain taking of the above-referenced parcel and hereby waive my right to seek further damages from the Town, which right could be exercised by filing a civil action in the Superior Court within three years from the date of the recording of Order of Taking.

Witness

Name: MARK L ROSE


Brooke Newman

Dated: 3/5/02

Article 2, Special Town Meeting, January 29, 2002

EXHIBIT

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RELEASE/REQUEST FOR PAYMENT OF DAMAGES

TO: Board of Selectmen of the Town of Truro
c/o Edward E. Veara, Esquire
Zisson and Veara
828 Main Street; P.O. Box 2031
Dennis, Massachusetts 02638

FROM: Sarah Landis
9 Story Street
Cambridge MA 02138

RE: Land in Truro, Barnstable County, Massachusetts
Parcel 6 on a plan of land entitled "Plan of Land at Pamet Harbor, Truro, Made for the Town of Truro, Scale 1" = 100', May 22, 2000, Slade Associates, Inc., Registered Land Surveyors, Rte 6 & Pine Point Road, Wellfleet, Massachusetts, 02667," which plan is recorded in the Barnstable County Registry of Deeds in Plan Book 571, Page 66, and more particularly described in **Schedule "D"** of the Order of Taking for the above-referenced parcel, which Order was recorded with the Barnstable County Registry of Deeds on February 15, 2002 at Book 14827, Page 266.

Ladies and Gentlemen:

I hereby accept, the offer of payment in the amount of Twenty Thousand (\$20,000.00) Dollars, as adopted by the Board of Selectmen in the Order of Taking on February 6, 2002,

pursuant to Massachusetts General Laws, Chapter 79, Section 39, as **settlement in full** of my claims for damages resulting from the eminent domain taking of the above-referenced parcel and hereby waive my right to seek further damages from the Town, which right could be exercised by filing a civil action in the Superior Court within three years from the date of the recording of Order of Taking.

pursuant to Massachusetts General Laws, Chapter 79, Section 8A, as **settlement pro tanto** of my claim for damages resulting from the eminent domain taking of the above-referenced parcel and hereby reserve my right to seek further damages from the Town by filing a civil action in the Superior Court within three years from the date of the recording of the Order of Taking.

Catherine J. Zisson

Witness
Name:

Sarah Landis

Sarah Landis
Social Security Number: 056-26-4615

Dated: 8/9/02

Article 2, Special Town Meeting, January 29, 2002

EXHIBIT

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TOWN OF TRURO



ZONING BYLAW SUBDIVISION REGULATIONS SIGN CODE

Published by the Truro Planning Board

with amendments to:

Zoning Bylaw through Annual Town Meeting April 2005

Subdivision Regulations through May 2002

Sign Code through Annual Town Meeting April 1992

Price: \$7.00

[The (month/year) are for reference purposes only]

Cynthia A. Slade, Town Clerk, Town of Truro/ May 24, 2006

A true copy, attest:

and detailed listing of annual maintenance expenses.

§ 30.7. Nonconforming Uses

- A. Continuanee. So long as structures or uses were lawfully constructed or begun, and lots were created lawfully, such structures or uses may continue to be used in the same manner and for the same purposes despite contrary provisions of this bylaw. Lawful, pre-existing, nonconforming uses and structures may, when a variance would otherwise be required, be altered or extended with a special permit if the Board of Appeals finds that the alteration or extension will not be substantially more detrimental to the neighborhood than the existing nonconforming use or structure and that the alteration or extension will exist in harmony with the general purpose and intent of this bylaw.
- B. Repairs, alterations. If the Building Commissioner determines and finds that the proposed repair, reconstruction, alteration, or structural change of a pre-existing, nonconforming, single-family or two-family residential structure will not increase the nature or extent of the nonconformity, then the Building Commissioner may approve and issue a building permit for the proposed repair, reconstruction, alteration, or structural change.
- C. Abandonment. Nonconforming uses which have been abandoned for a period of 2 years or more shall not be re-established, and any future use shall conform to the then current bylaw.
- D. In the event that a non-conforming structure, which was lawful when built, is so damaged by fire or other natural causes that it can no longer be used for the purpose for which it was being used at the time such damage was inflicted, such structure may be rebuilt as of right within two years of sustaining such damage provided that any non-conformity is not increased in the course of such reconstruction. This right of reconstruction shall not foreclose recourse to the Board of Appeals for such further relief as may be available by special permit or variance. (4/05)

§ 30.8. Special Permits.

- A. Construction or operation under a building or special permit shall conform to any subsequent amendment of this bylaw unless the use or construction is commenced within a period of six months after the issuance of the permit and in cases involving construction, unless such construction is continued through to completion as continuously and expeditiously as is reasonable.
- B. A special permit shall lapse after one year if a substantial use thereof has not sooner commenced except for good cause or, in the case of permit for construction, if construction has not begun by such date except for good cause.
- C. Special permits may be approved only after a finding by the Board of Appeals or Planning Board (as applicable, see use table) that the proposed use is in the opinion of the Board in harmony with the general public good and intent of this bylaw. The approval shall be subject to any other applicable provision of this bylaw and the Board may impose conditions, safeguards, and limitations on time and use, which in the Board's opinion are necessary to comply with the intent and purpose of this bylaw.
- D. The Board of Appeals or Planning Board (as applicable) shall adopt and from time to time amend rules relative to the issuance of such permits, and shall file a copy of those rules in the office of the Town Clerk. Said rules shall describe the size, form, contents, style and number of copies of plans and specifications and the procedure for submission and approval of the permits.
- E. Special permits may only be acted upon following public hearings conducted in accordance with the provisions of Massachusetts General Law, Chapter 40A or amendments thereto, within 65 days after filing with the Board the application for the permit. The Board shall act on the application for

SECTION VIII — GENERAL REGULATIONS

VIII-A Non conforming uses

No premises in the Town of Truro shall be used under the following conditions:

1. For any purpose of a junk yard, or storage of used motor vehicles or other equipment used as junk.
2. For the purpose of a commercial tenting camping area, or a trailer park.

VIII-B Continuation of non conforming uses

1. So long as buildings were constructed, uses were begun, and lots were created lawfully, they may continue to be used in the same manner and for the same purposes despite contrary provisions of this bylaw. Lawful, preexisting, nonconforming structures and uses may, when a variance would otherwise be required, be altered, or extended with a special permit if the Board of Appeals finds that the alteration or extension will not be substantially more detrimental to the neighborhood than the existing nonconforming structure or use and that the alteration or extension will exist in harmony with the general purpose and intent of the bylaw. (2/60,6/78,4/92)
2. If the Building Commissioner determines and finds that the proposed repair, reconstruction, alteration, or structural change of a preexisting, nonconforming, single-family or two-family residential structure will not be substantially more detrimental to its neighborhood than the existing nonconforming structure and will not increase the nature or extent of the nonconformity, then the Building Commissioner may approve and issue a building permit for the proposed repair, reconstruction, alteration, or structural change. (12/88)
3. A nonconforming use which has been abandoned for the period of two years, shall not be re-established, and any future use shall conform to the then current by-law. (2/60,6/78)

VIII-C Special Permits

1. Construction or operation under a building or special permit shall conform to any subsequent amendment of this By-law unless the use or construction is commenced within a period of six months after the issuance of the permit and in cases involving construction, unless such construction is continued through to completion as continuously and expeditiously as is reasonable.
2. A special permit shall lapse after one year, if a substantial use thereof has not sooner commenced except for good cause or, in the case of permit for construction, if construction has not begun by such date except for good cause.
3. Special permits may be approved only after a finding by the Board of Appeals or Planning Board (as applicable) that the proposed use is in the opinion of the Board in harmony with the general public good and intent of this Bylaw. The approval shall be subject to any other applicable provision of this By-law and the Board may impose conditions, safeguards, and limitations on time and use which in the Board's opinion are necessary to comply with the intent and purpose of this By-law. (6/78,4/92)
4. The Board of Appeals or Planning Board (as applicable) shall adopt and from time to time amend rules relative to the issuance of such permits, and shall file a copy of those rules in the office of the Town Clerk. Said rules shall describe the size, form, contents, style and number of copies of plans and specifications and the procedure for submission and approval of the permits. (6/78,4/92)